ILLINOIS POLLUTION CONTROL BOARD

WRB REFINING, LLC	)	PCB 2012-039	PCB 2012-077
(multiple applications)	)	2012-040	2012-078
	)	2012-065	2012-079
	)	2012-066	2012-080
	)	2012-067	2012-081
	)	2012-068	2012-082
	)	2012-069	2012-083
	)	2012-070	2012-084
	)	2012-071	2012-086
PROPERTY IDENTIFICATION NUMBERS	)	2012-072	2012-087
19-1-08-35-00-000-001,	)	2012-073	2012-088
19-1-08-34-00-000-008.004, and	)	2012-074	2012-089
19-1-08-34-00-000-006, or portions thereof	)	2012-075	2012-090
	)	2012-076	2012-091
	)		
	)	(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 the Motion for Leave to file a Joint Reply Instanter and Joint Reply to the Illinois EPA's and WRB Refining's Responses to its Motion for Reconsideration and Petition for Leave to Intervene of Roxanna Community Unit School District No. 1, a copy of which is herewith served upon you.

DATED this 4th day of January, 2012.

ROXANA COMMUNITY UNIT SCHOOL DISTRICT NO. 1

By: _____

Brian R. Bare, Attorney for School District

WHITT LAW LLC
Stuart L. Whitt
Joshua S. Whitt
Brian R. Bare
Brittany F. Theis
70 S. Constitution Drive
Aurora, Illinois 60506
(630) 897-8875

Service List

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P.O. Box 19276
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WRB Refining, LLC
Michael Kemp
404 Phillips Building
Bartlesville, OK 74004

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

Hodge Dwyer & Driver
Katherine D. Hodges
Monica T. Rios
3150 Roland Avenue
Post Office Box 5776
Springfield, IL 62705-5776

CERTIFICATE OF SERVICE

I, Brian R. Bare, the undersigned attorney, hereby certify that I have served the attached Motion for Leave to file a Joint Reply Instanter and Joint Reply to the Illinois EPA's and WRB Refining's Responses to its Motion for Reconsideration and Petition for Leave to Intervene on all parties of record, by certified mail 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
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DATED this 4th day of January, 2012.

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19-1-08-34-00-000-006, or portions thereof	)	2012-075	2012-090
	)	2012-076	2012-091
	)		
	)	(Tax Certification – Air)	

SCHOOL DISTRICT'S MOTION FOR LEAVE
TO FILE A JOINT REPLY *INSTANTER*

NOW COMES the Board of Education of Roxana Community Unit School District No. 1 (herein "School District"), by its attorneys, WHITT LAW LLC, and, for its Motion for Leave to File a Joint Reply *Instanter*,[1] states as follows:

1. The Illinois EPA and WRB Refining are eager to urge this Board to overlook their own missteps and shortcomings in these applications for tax certification without any reply by the School District. This would be materially prejudicial and the School District requests leave to reply to both the Illinois EPA and WRB Refining.

2. The Board's regulations allow a movant the right to reply only "as permitted by the Board or the hearing officer to prevent material prejudice." 35 Ill.

[1] The School District recognizes that these cases have not been consolidated. However, the Illinois EPA and WRB Refining have presented the same arguments against intervention in both sets of cases. For brevity, the School District has prepared a joint reply to both.

Admin. Code § 101.500(e) (2011). Should the Board follow the urging of the Illinois EPA and WRB Refining and deny the School District's motion for reconsideration and petition for leave to intervene, there will be no hearing officer to decide this matter. Thus, the School District requests that the Board allow it to file this joint reply to prevent material prejudice.

3. Should the Board follow the positions urged by WRB Refining and the Illinois EPA, the School District would be materially prejudiced by the removal of the properties at issue in these two cases from the locally assessed tax rolls and their preferential treatment as pollution control facilities, without a full hearing on whether they actually qualify as such.

4. These properties have a value of at least $1.2 billion, as admitted by WRB Refining. Without certification, they would be treated as real property and subject to taxation at one-third their fair cash value. They would contribute $400 million to the School District's property tax base and would have resulted in several million dollars of property tax revenue last year. As previously noted, these properties were excluded from taxation as a result of a settlement agreement that expired last year. Granting these properties pollution control facility status could potentially result in the loss of that entire amount annually for many years, which would materially prejudice the School District if, as the District believes, they do not meet the statutory criteria for such status.

5. Presumably the Illinois EPA and WRB Refining will not oppose granting the School District leave to file this joint reply. Both have championed "a full airing of the contentions raised by Petitioner" (EPA's Motion for Leave to File Instanter Response to Motion for Reconsideration, paragraph 4) and "a more complete record for the

Board's review and consideration" (WRB Refining's Motion for Extension of Time to File Response to Motion for Reconsideration, paragraph 6).

6. Of course, the fullest and most complete record would be made by granting a hearing with discovery, as requested in the Motion for Reconsideration. Until that is granted, written pleadings are the School District's only opportunity to voice support for its request for a full and comprehensive review of these applications before these properties are granted such preferential status.

For these reasons, the Board of Education of Roxana Community Unit School District No. 1, respectfully requests that the State of Illinois Pollution Control Board grant it leave to file the accompanying joint reply instanter, grant it leave to intervene in these matters, and grant it such other and further relief as the Pollution Control Board deems just and equitable.

ROXANA COMMUNITY UNIT SCHOOL DISTRICT NO. 1

/s/ *Joshua S. Whitt*

Joshua S. Whitt, Attorney for School District

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Joshua S. Whitt
Brian R. Bare
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	)	2012-076	2012-091
	)		
	)	(Tax Certification – Air)	

SCHOOL DISTRICT'S JOINT REPLY TO THE ILLINOIS EPA'S AND WRB REFINING'S RESPONSES TO ITS MOTION FOR RECONSIDERATION AND PETITION FOR LEAVE TO INTERVENE

NOW COMES the Board of Education of Roxana Community Unit School District No. 1 (herein "School District"), by its attorneys, WHITT LAW LLC, and, for its Joint Reply to the Illinois Environmental Protection Agency's (herein "Illinois EPA") and WRB Refining, LLC's (herein "WRB Refining") Responses to its Motion for Reconsideration in Docket Nos. 2012-039 and -040 and its Petition for Leave to Intervene in Docket Nos. 2012-065 through -084 and -086 through -091,[1] states as follows:

1. The School District has no "zeal for litigiousness." (EPA Response to Motion for Reconsideration, paragraph 24.) The School District is in the business of

[1] The School District recognizes that these cases have not been consolidated. However, with the exception of the mootness argument and property-specific references, the Illinois EPA and WRB Refining have presented the same arguments against intervention in both sets of cases. For brevity, the School District has prepared a joint reply to both. All citations herein are to the responses filed in Docket No. 2012-039 unless otherwise noted.

educating children and it is only able to do so through its receipt of property tax revenues. The Wood River refinery is the single largest taxpayer in its boundaries and paid 33% of its total property tax revenues in 2010. If WRB Refining has taken advantage of the tax certification process and has sought to certify non-conforming property as pollution control facilities, as the School District believes, that will materially prejudice the School District and its constituents. The School District cannot be expected to sit idly by as its largest taxpayer potentially abuses the system and erodes its tax base to the detriment of the children and the other taxpayers it serves.

2. The method of review and certification advocated here by the Illinois EPA and WRB Refining would result in a system which deprives affected taxing bodies of the opportunity to intervene before certification is granted, provides the Board with no outside review of the Illinois EPA's recommendations, and binds the Board to prior certifications that may have suffered from similar deficiencies. Instead, the review requested by the School District – and described in the Board's own regulations – would provide for the development of a proper factual record, a hearing before the Board's designated hearing officer, and an opportunity for the Board to make a fully informed decision before it grants essentially irrevocable pollution control facility certification and the preferential tax treatment that status entails.

3. As a preliminary matter, the School District notes that it inadvertently omitted Docket No. 2012-079 from its petition for leave to intervene due to a typographical error. The Clerk of the Board did post the petition to that docket and the Illinois EPA and WRB Refining have included it in their responses. The School District hereby confirms that these filings should apply to Docket No. 2012-079, which concerns

equipment worth at least $267 million and which is intended to remove sulfur from naphtha, a blending component of gasoline. The arguments previously made apply fully to this property the same as they apply to the others. In addition, the School District has attached hereto as Exhibit 1A a revised version of the table attached to its petition for leave to intervene. Docket No. 2012-085, which was also omitted from the petition, is an entirely unrelated matter which does not involve the Wood River refinery.

4. In addition, regardless of the Board's decision on the School District's motion for reconsideration and petition for leave to intervene, the School District is obligated to point out that the Illinois EPA has, in two of the matters here, recommended issuance of the certification despite its own technical memoranda recommending denial. In Docket Nos. 2012-086 and -091, Ed Bakowski of the Illinois EPA issued technical memoranda wherein he stated "it is my engineering judgment that the proposed facility may not be considered 'Pollution Control Facilities' under 35 IAC 125.00(a), with the primary purpose of eliminating, preventing, or reducing air pollution . . . and therefore not eligible for tax certification from the Illinois Pollution Control Board." (2012-086 and -091 Recommendations, Exhibit B.) He continued, "it is my recommendation that the Board deny the requested tax certification for [these] facilit[ies]." (*Id.*) Although their value is minimal compared to the other properties at issue, the Board should be fully advised as to this fact before it proceeds further.

I. The School District Has a Right To Request Leave to Intervene In Tax Certification Matters and the Board Has The Power To Grant Intervention.

5. The Illinois EPA recognizes the fact that taxing bodies like the School District "possess an interest in the outcome of these types of proceedings." (EPA

Response to Motion for Reconsideration, paragraph 25.) However, WRB Refining faults the School District for failing to cite a case where the Board has granted intervention in a tax certification proceeding. (WRB Response to Motion for Reconsideration, p. 9.) The School District has reviewed the Board's online database and has not located a single tax certification proceeding in which a third party filed a petition for leave to intervene, either before or after the certification was granted.

6. The Board's regulations clearly allow for the filing of a third-party petition for leave to intervene, however. Title 35, Part 125 of the Illinois Administrative Code contains the Board's regulations specifically pertaining to tax certifications. It explicitly states that Part 125 "must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all adjudicatory proceedings before the Board." 35 Ill. Admin. Code § 125.100(b) (2011). Although Part 125 controls in the event of a conflict with Part 101, there is no conflict because Part 125 is completely silent on the matter of intervention. Similarly, Part 125 is silent on the filing of motions for reconsideration, and thus the Illinois EPA, in its motion for leave to file its response, cited to the relevant section of Part 101 instead. (EPA Motion for Leave to File Instanter Response, paragraph 2.) Because Part 125 does not prohibit third-party intervention in tax certifications, the intervention provisions of Part 100 are applicable and intervention should be allowed.

7. Inexplicably, the Illinois EPA describes the School District's request for leave to intervene as a "fishing expedition." (EPA Response to Motion for Reconsideration, paragraph 25.) However, this Board has, on several occasions, set tax certifications for hearing before a hearing officer where the Illinois EPA has

recommended denial of the certification. Thus, it appears that the Illinois EPA does not want any further review of these applications beyond its own review by a single technical evaluator and a single attorney. This is not consistent with this Board's statutory obligation to determine the fitness of property for certification or the Board's regulations allowing for intervention.

8. Most significantly, WRB Refining cites a number of cases which it claims restrict the Board's ability to grant leave to intervene in tax certification cases entirely. (WRB Response to Motion for Reconsideration, pp. 12 – 15.) The Illinois EPA also cited this case law in its response to the petition for leave to intervene, filed four days after WRB Refining first raised this argument, but the Illinois EPA made no mention of these cases in its first filing responding to the motion for reconsideration – because these cases are not relevant.

9. This entire line of cases relied upon by WRB Refining and the Illinois EPA is predicated upon the Illinois Supreme Court's decision in *Landfill, Inc. v. Pollution Control Bd.* 74 Ill.2d 541 (1978). In *Landfill, Inc.*, the plaintiff had filed an application for a sanitary landfill permit with the Illinois EPA, which ultimately held a public hearing and issued the permit. *Id.* at 547-48. Certain third parties then filed an application before the Board to revoke that permit. *Id.* at 548. Before the Board could take final action on that application for revocation, the plaintiff filed for an injunction in the circuit court. *Id.*

10. The substantive question before the courts was simply "whether the Board had statutory authority to hear third-party challenges to permit-granting decisions by the Agency." *Id.* at 552. In deciding that question, the Court looked to the differing statutory roles of the Board and the Illinois EPA, noting that the Board "has authority to conduct

hearings upon, among other specified matters, complaints charging violations of the Act or of regulations thereunder and upon petitions for review of the Agency's denial of a permit as well as authority to hold other such hearings as may be provided by rule," while the Illinois EPA "has the duty to administer permit systems established by the Act or regulations and has the authority to require permit applicants to submit plans and specifications and reports regarding actual or potential violations of the Act, regulations or permits." *Landfill, Inc.*, 74 Ill.2d at 554. The Court also noted that "[i]f the Board were to become involved as the overseer of the Agency's decision-making process through evaluation of challenges to permits, it would become the permit-granting authority, a function not delegated to the Board by the Act." *Id.* at 557.

11. However, that is precisely the arrangement in place for the issuance of tax certifications. The Board is the overseer of the Illinois EPA's review of applications. The Illinois EPA has no authority to issue tax certifications because that function is delegated to the Board by the Property Tax Code. Rule 503(a) in *Landfill, Inc*. was held to be void because "the result of a 503(a) proceeding is to make the Board the permit-granting authority, a usurpation of the Agency's function." *Id.* at 558. Notably, in *Landfill, Inc.*, the Illinois EPA had already held a public hearing on the permit, whereas, the Board is the only body capably by law of holding a hearing on tax certifications.

12. *Landfill, Inc.* contains a passing reference to Section 40 of the Environmental Protection Act, which has been referenced by the Board in the other decisions cited here by WRB Refining and the Illinois EPA, specifically *Williamson County*, *Chicago Coke*, *Kibler Development*, *Sutter Sanitation*, and *Riverdale Recycling*. (WRB Response to Petition to Intervene, pp. 5-8; EPA Response to Petition to

Intervene, paragraphs 9-10.) However, Section 40's language on appeal rights is nothing like the language provided for the appeal of tax certification proceedings set forth in the Property Tax Code. Section 40 provides the primary right of appeal to an applicant "[i]f the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act . . . ." 415 ILCS 5/40 (2011). However, the Property Tax Code states that a certification order of the Board may be appealed under the Administrative Review Law by "[a]ny applicant or holder aggrieved by the issuance, refusal to issue, denial, revocation, modification or restriction of a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate." 35 ILCS 200/11-60 (2011) (emphasis added). There is no scenario by which an applicant for or holder of a pollution control certificate or low sulfur coal certificate would be "aggrieved by the issuance" of such a certificate. However, one party that could be aggrieved by its issuance is a taxing body that could potentially lose significant property tax revenue as a result of the certification of nonconforming property. Thus, granting such a party leave to intervene, and consequently elevating it to the status of a "party," is not contrary to the General Assembly's intentions.

13. WRB Refining takes issue with the School District's description of *Reed-Custer* but fails to recognize the impact of the certification scheme in place at the time of that holding. *Reed-Custer Community Unit School District No. 255 v. Pollution Control Board*, 232 Ill. App. 3d 571, 576 (1st Dist. 1992) (appeal from PCB No. 87-209, Aug. 30, 1990). WRB Refining correctly stated that, at the time of *Reed-Custer*, the Board had delegated to the Illinois EPA the authority to issue certifications, and had only retained the authority to revoke certifications. (WRB Response to Motion for Reconsideration, p.

6, footnote 3.) Despite noting it, WRB Refining fails to recognize that, as a result of that delegation, the Board was not involved when the Illinois EPA certified a pollution control facility, and thus third-party intervention before the Board was not procedurally possible. The same is true for *Waltonville Community Unit School District No. 1 v. Consolidation Coal Company*, PCB No. 89-149 (Dec. 6, 1989), also cited by WRB Refining. (WRB Response to Motion for Reconsideration, p. 11.) In fact, in *Waltonville*, the Board specifically noted the delegation of authority and directed the taxing bodies there to inquire with the Illinois EPA. *Id.*, at 2. Now that the procedure has changed and the Board is the final arbiter in tax certifications, the third-party petition process approved of in *Reed-Custer* applies equally before the certification is granted as it does afterwards.

14. Under today's certification procedures, the Board retains the authority to issue certifications. Viewing *Reed-Custer* in light of the Board's regulations, it is clear that third-party intervention before certification is both possible and encouraged by the Board. However, given the lack of any public disclosure of pending recommendations by the Illinois EPA, the extremely brief window of time between initial filings and the Board's orders granting tax certifications, and the lack of any notice to the affected taxing bodies, it is not surprising that no other taxing bodies have had the opportunity to file such a petition for leave to intervene in the past.

15. WRB Refining also argues that there is no statutory authorization for third-party intervention in a tax certification. On the other hand, there is no statutory prohibition, either. Instead, the Board's regulation on intervention deals with statutory rights to intervene and permissive intervention separately. 35 Ill. Admin. Code § 101.402(c) and (d) (2011).

II. The School District's Motion For Reconsideration Provides the Board with Sufficient Bases for Reconsideration.

16. WRB Refining cites several reasons that provide the basis for a motion to reconsider, but fails to note how the School District has provided these bases in these cases. WRB Refining noted that a motion for reconsideration is proper "to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." (WRB Response to Motion for Reconsideration, p. 3.) Importantly, no hearing was ever held in these matters. The only evidence provided to the Board was a brief recommendation based upon a summary application from WRB Refining. The School District has no means of presenting newly discovered evidence without a hearing and discovery process directed by the Board.

17. In addition, the School District pointed out the errors in the Board's application of the existing law on mootness. The School District believes that this decision was incorrect based upon the plain language of the Board's own regulations. That analysis, in Section I of the motions for reconsideration, need not be repeated here, other than to note that WRB Refining received service of the School District's petition before it received service of the Board's September 8 order, and consequently it was on notice that that was not a "final order" because it did not "terminate[] the proceeding leaving nothing further to litigate or decide" and it was not "appealable to an appellate court." 35 Ill. Admin. Code § 101.202 (2011).

18. The doctrine of mootness is clear. The Illinois Supreme Court has, in the appellate context, stated that "[a] case on appeal becomes moot where 'the issues involved in the trial court no longer exist' because events occurring after the filing of the

appeal render it impossible for the appellate court to grant the complaining party effectual relief." *In re A Minor*, 127 Ill.2d 247, 255 (1989). That is decidedly not the case here. The petition to intervene was not moot. Nothing occurred after its filing that would have rendered it impossible for the Board to grant it relief. It was filed and served on the parties in interest before the Board's order of September 8.

19. The Board, when it decided the petition to intervene, had the power to rescind, modify, or reconsider its non-final September 8 order granting certification because it was reasonably necessary to do so in order to carry out the Board's duty to determine which properties qualify as pollution control facilities. The Supreme Court has held that "an express grant of power or duty" to an administrative body like the Board "carries with it the grant of power to do all that is reasonably necessary to execute that power or duty." *Lake County Bd. of Review v. Property Tax Appeal Bd.*, 119 Ill.2d 419, 427 (1988). The Board has the power and duty to determine what property meets the statutory definition of pollution control facilities, and it may do all that is reasonably necessary to fulfill that duty – including granting intervention, setting the matter for hearing, or rescinding an order that was not final and concerned property that may not have been properly reviewed or recommended for certification.

20. Second, WRB Refining notes that "a motion to reconsider may specify 'facts in the record which were overlooked.'" (WRB Response to Motion for Reconsideration, p. 3.) The School District did exactly that when it demonstrated in paragraphs 34 through 45 how the federal Clean Air Act requirements for the removal of sulfur from certain fuel types undermine WRB Refining's contention that these properties have the primary purpose of reducing air pollution, instead of the primary

purpose of producing economically-viable products for sale. Furthermore, although the Illinois EPA correctly notes that this economic argument would be appropriate before the Illinois Department of Revenue if these properties are ultimately certified, it is also relevant here to the statutory determination of whether these properties have the reduction of pollution as their "primary purpose" – that being the primary criterion for certification as pollution control facilities.

21. WRB Refining notes that the certification was effective as of the application date, October 14, 2010, or the date of construction, whichever is later. (WRB Response to Motion for Reconsideration, p. 4.) Consequently, should the Board reconsider its denial of the petitions, grant the School District leave to intervene, and ultimately choose to certify both properties, the certification will still be effective as of the application date. Furthermore, both of the facilities at issue in Docket Nos. 2012-039 and -040 had been completed for several years before WRB Refining ever applied for certification, so it was well within WRB Refining's power to apply much earlier and avoid any delay if it had so desired.

22. The mootness doctrine "stems from the fear that parties to a dispute which for practical purposes has ceased to exist will lack the 'personal stake in the outcome of the controversy [which serves] to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult . . . questions.'" *In re A Minor*, 127 Ill.2d at 255. There is a concrete controversy and adverseness between the School District and WRB Refining here. Both parties have a clear personal stake in the outcome. Consequently, the School District's petitions for leave to intervene were not moot and should be reconsidered.

III. Although the School District has Demonstrated Several Reasons Why These Properties Should Not Be Certified, a Full Hearing Will Provide More Meaningful Input than the Briefing on These Matters.

23. In its motion and petition, the School District described several reasons why these properties may not meet the statutory definition of pollution control facilities. The Illinois EPA has seized upon this opportunity to fiercely advocate the merits of certification in Docket Nos. 2012-039 and -040. It has written more about the certification of these properties than it did in the original recommendations. However, the proper forum for this discussion is in an evidentiary hearing following a discovery process, not in the briefing on a motion for reconsideration.

24. First, the Illinois EPA contends that its cut-and-paste error in its recommendation on Docket No. 2012-039 was harmless error because it only involved a one-paragraph passage. (EPA Response to Motion for Reconsideration, paragraph 7.) This is incorrect. Although it began in paragraph 4 of the recommendation, it continued through the final paragraph 8. It was also repeated by the Board in its order of September 8.

25. Next, the Illinois EPA contends it was harmless error because of the "lengthy technical discussion" provided by WRB Refining. (EPA Response to Motion for Reconsideration, paragraph 9.) In particular, this consists of filling in some of the blanks on the Illinois EPA's two-page form, plus attaching a one-and-a-half page narrative and two letter-size pages of schematic diagrams. None of these identify any particular piece of property, machinery, or equipment as being included in or excluded from the application. There is no itemized breakdown of the $99 million "installed cost" (per WRB Refining's illicit modification of the Illinois EPA's form) or how that number applies to any of the items on the schematic. Furthermore, the narrative itself is essentially a

cut-and-paste modification of the narrative submitted by WRB Refining for Docket No. 2012-040.

26. Finally, it notes that the Illinois EPA's technical evaluation was also contained in the recommendation. (EPA Response to Motion for Reconsideration, paragraph 11.) Of course, this consists of a single-page, seven-sentence memorandum that does little more than paraphrase the applicant's description of the project, provide the address and property identification number, and state whether or not the author recommends granting certification. Interestingly, as noted above, the Illinois EPA failed to note in two of the other twenty-six applications that the technical reviewer had recommended against certification and instead filed a recommendation in support of it.

27. After that, the Illinois EPA proceeds with a five-page discussion of why this property meets the requirement for certification. Of course, its original recommendation was only half that length, including the case caption and signature block.

28. The Illinois EPA states that *Central Illinois Light Company v. Department of Revenue*, 117 Ill.App.3d 911 (3rd Dist. 1983), is analogous, even though it involved a cooling pond and truck scales instead of petroleum desulfurization equipment. Then, the Illinois EPA cites seven certifications by this Board of desulfurization equipment as pollution control facilities. These purportedly similar cases were absent from the Illinois EPA's original recommendation, of course.

29. Interestingly, although the Illinois EPA summarizes the description of these previously certified facilities, it provides no information about the property included in them or its value. The recommendation in *Aux Sable*, 2002-123, dealing with natural gas, is not available on the Board's website. The next recommendation,

ConocoPhillips, 2004-214, involves a low sulfur gasoline project at the same refinery at issue here, with a value of $70.4 million. Of course, there is no discussion of how that $70.4 million project relates to the $99 million SZorb project at issue here in No. 2012-039. Next, Illinois EPA points to four cases from Marathon Ashland Petroleum. The first, 2006-94, involves a $484,000 modification project. Next, 2007-56, involves a gasoline desulfurization unit worth $106.4 million which could potentially be similar to the property at issue in 2012-039, although nothing more than a single parenthetical is given for a description. Next, 2011-084, involves a $750,000 project.

30. Finally, 2012-005 involves a $63.8 million ultra-low sulfur diesel project which could potentially be similar to the property at issue in 2012-040, although, again, only a single parenthetical is given. Significantly, the ultra-low sulfur diesel project at Marathon cost only $63.8 million, whereas WRB Refining claimed its project in 2012-040 cost $199 million, a difference of over $135 million between the two projects. Also, in its response on 2012-040 only, the Illinois EPA cites to *Exxon Mobil*, 2005-122, another ultra-low sulfur diesel project which could potentially be similar, although at a value of only $45.6 million. Again, only a single sentence of description was given, with no discussion of the $153 million difference between the two.

31. Even more intriguing is the lack of any discussion of the capacities of these various desulfurization projects at these three refineries. According to the U.S. Energy Information Administration[2], WRB Refining's Wood River refinery had a 2011 downstream charge capacity on its diesel fuel desulfurization of 46,000 barrels per

[2] The supporting data for these figures as of January 1, 2011, is available at www.eia.gov/petroleum/refinerycapacity/refcap11.xls from the U.S. Energy Information Administration. For space reasons, the School District has not reproduced it here.

stream day. By contrast, Exxon Mobil's Joliet refinery has a capacity of 85,100 barrels per stream day, and Marathon's Robinson refinery has a capacity of 79,000 barrels per stream day – both nearly double the capacity but at far less of a cost than WRB Refining claimed in its application here. Comparing the gasoline desulfurization capacity, WRB Refining has 80,000 barrels per stream day compared to Marathon's 41,500 barrels, possibly reflecting the Wood River refinery's $169 million worth of equipment (2012-039 plus 2004-214 cited by the Illinois EPA) compared to Marathon's $106.4 million, although further gasoline desulfurization applications from WRB Refining may still be pending before the Illinois EPA, as the School District's Freedom of Information Act request of November 7, 2011, has still not been answered.

32. Of course, in all of these cases, only a few days passed between the filing of the Illinois EPA's recommendation and the Board's order granting certification, giving no opportunity for intervention by any affected taxing bodies. The Illinois EPA's recommendations were uniformly brief, as were the applicants' descriptions. Although the Illinois EPA has presented them as precedent for its recommendations here, they lack any material scrutiny or meaningful comparison to the projects here.

IV. Public Policy Favors A Full and Meaningful Review of Whether These Properties Actually Qualify For the Preferred Status of Pollution Control Facilities.

33. Public policy does not support a closed certification process with no right for third-party intervention until after the essentially irrevocable certification has been granted, as advocated by WRB Refining. (WRB Response to Motion for Reconsideration, pp. 14-15.) WRB Refining also claims that allowing intervention here will overwhelm the Board and the courts. (WRB Response to Motion for

Reconsideration, p. 15.) This is unlikely. Of the fifty-four applications for tax certification filed on the 2012 docket, WRB Refining submitted thirty-five of them. It appears to the School District that allowing WRB Refining to submit applications without meaningful review is much more likely to fill the Board's docket. Furthermore, it seems unlikely that there are many other taxing districts facing the potential loss of several billion dollars worth of real property from their locally assessed rolls, as the School District faces here. Intervention in these tax certifications is at the discretion of the Board, and if a future potential intervenor is not facing the same magnitude of impact, there is no reason why the Board would have to exercise its discretion in that hypothetical case.

34. WRB Refining states that "certification only means that the duty to assess the pollution control facility shifts from the local assessor to the Department of Revenue ("DOR"), which does not necessarily result in the assessment being reduced." (WRB Response to Motion for Reconsideration, p. 15.) That is not the only result, however. Certification also means that the property will now be valued and assessed under different rules: at one-third "of the fair cash value of their economic productivity to their owners," 35 ILCS 200/11-5 (2011), instead of at one-third of the "fair cash value" of the property itself. 35 ILCS 200/9-145 (2011).

35. The difference is significant. This is illustrated by the fact that WRB Refining has, on Section E(5) of the application form, listed the percentage value of these properties to the whole facility as "To Be Determined," removed the text labeling item 5(a) as "Fair Cash Value If Considered Real Property," and replaced it with its own text stating "Total Installed Cost". If these items would be taxed essentially the same,

then WRB Refining would not be submitting modified and incomplete applications. The Board should note the tremendous disparity between the "Total Installed Cost" (which is really the "Fair Cash Value If Considered Real Property") and the Net Salvage Values in item 5(b). Moreover, if these facilities generate significant amounts of revenue, as the School District has advocated here, that directly calls into question whether or not their primary purpose is the reduction of pollution.

36. Furthermore, the fact that the School District is engaged in separate litigation to determine the value of the Wood River refinery for property tax purposes has no bearing on the reason for intervention here – to determine whether or not these properties actually qualify as pollution control facilities. If they do, they should be removed from the locally assessed property tax rolls and valued by the Department of Revenue as set forth in the statute. If they do not, however, the School District will have no means in that separate litigation to invalidate that certification. That opportunity lies solely before this Board.

37. The School District has provided as much factual review and analysis as it can possibly be expected to provide with minimal notice and no discovery or factual record upon which to rely. Consequently, the School District's motion for reconsideration is sufficient and should be granted. A full and proper evidentiary hearing is the only vehicle by which this Board will obtain sufficient evidence upon which to rely in granting or denying these certifications.

38. The School District's intervention requests were not moot. Its requests for leave to intervene and its motions for reconsideration were timely and should be considered on their merits. Intervention will not unduly delay or materially prejudice

these proceedings. The recommendations and briefs filed here are not sufficient to provide this Board with a meaningful review of the properties at issue. Intervention by the School District and a full evidentiary hearing will aid and assist the Board in its determination of these matters.

For these reasons, the School District respectfully requests that the Board grant its motions for reconsideration in 2012-039 and -040 and grant it leave to intervene in all of the above captioned proceedings.

ROXANA COMMUNITY UNIT SCHOOL DISTRICT NO. 1

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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 12-079	Delayed Coker Naphtha Hydrotreater	$267,127,026	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:	**$975,670,758**				

EXHIBIT 1A