

Sales of tangible personal property to be used or consumed in the operation of pollution control facilities located in an enterprise zone and certified by the Department of Commerce and Economic Opportunity are exempt from the tax imposed by the Retailers' Occupation Tax Act. See 35 ILCS 120/1e; 86 Ill. Admin. Code 130.1951(i). (This is a PLR.)

April 2, 2012

Dear Xxxxx:

This letter is in response to your letter dated November 7, 2011, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

On behalf of our client, COMPANY, and the tenant-in-common group defined below, we respectfully request the Illinois Department of Revenue to issue a Private Letter Ruling pursuant to 2 Ill. Adm. Code 1200.110 addressing the Retailers' Occupation Tax treatment of certain chemicals and catalysts used or consumed in a pollution control facility located in an Illinois Enterprise Zone.

The tenant-in-common group includes BUSINESSES, the 'TIC Group'.

For U.S. income tax purposes, this ownership group has elected not to be treated as a partnership. We respectfully request this private letter ruling on behalf of the Company and each entity in the TIC Group.

General Information

1. Enclosed please find original Form IL-2848, Power of Attorney, authorizing FIRM to represent the Company and each entity in the TIC Group before the Illinois Department of Revenue (the 'Department')(attached as Exhibit A).
2. This Private Letter Ruling ('PLR') is not requested with regard to hypothetical or alternative proposed transactions. This PLR is requested to determine the Retailers' Occupation Tax and/or Use Tax consequences of the actual business practices of the Company and the TIC Group.
3. Neither the Company nor the TIC Group is currently engaged in litigation with the Department in regard to this or any other tax matter.
4. Neither the Company nor any member of the TIC Group is currently under audit by the Department in regard to this or any other tax matter.
5. To the best knowledge of the Company's and the TIC Group's personnel, the Department has not previously ruled regarding this matter for the Company or the TIC Group. In addition, neither the Company nor the TIC group [sic] has submitted the same or similar issue to the Department.
6. The Company and the TIC Group request that certain information be deleted from the PLR prior to dissemination to others. The Company and the TIC Group request that their respective names, addresses, location of the facility, the description of the facility [including reference to the plant's megawatt(s) and sources of water], and the name of its representative be deleted.
7. Neither the Company nor the TIC Group knows of any authority contrary to the authorities referred to and cited below.

Statement of Material Facts

1. The TIC Group owns an electric facility and coal mine, located in LOCATION, Illinois. The TIC Group formed COMPANY2, A STATE not-for-profit corporation, of which the TIC Group are the only members. In turn, STATE not-for-profit CORPORATION is the sole member of the Company, a single member LLC. Company was established to operate the power plant (for a graphic depiction of the relationship, see the diagram attached as Exhibit B). The business model for this operating entity will be a mine-mouth power plant.¹
2. The Company and TIC Group are developing an underground coal mine with an annual coal production capacity of approximately # tons per year.
3. The Company acts as a disclosed purchasing agent of the TIC Group.
4. The Company and TIC Group have met the criteria as prescribed in 35 ILCS 120/1f to qualify for the Retailers' Occupation Tax exemption available for tangible personal property used or consumed by pollution control facilities (the exemption is provided in 35 ILCS 120/1e).
5. The electricity generating facility and coal mine have not yet become fully operational.

Ruling Requested

On behalf of the Company and TIC Group, we respectfully request the Illinois Department of Revenue rule that limestone, anhydrous ammonia, a catalyst (and replacements) of tungsten oxide and vanadium pentoxide, powdered activated carbon (or other suitable material), lime or sodium bicarbonate (or other suitable material), formic acid, sodium hypochlorite, and other necessary chemicals qualify as 'tangible personal property used or consumed in the operation of pollution control facilities' for the purpose of the exemption from Retailers' Occupation Tax provided under 35 ILCS 120/1e and 86 Ill. Admin. Code 130.1951(i).

RELEVANT AUTHORITIES

The Illinois Retailers' Occupation Tax Act (the 'Act') imposes a tax on persons engaged in the business of making retail sales of tangible personal property. 35 ILCS 120/2. In accordance with Section 2-10 of the Act, this tax is measured by the seller's gross receipts. 35 ILCS 120/2-10.

The sale of all tangible personal property for use or consumption in the operation of a pollution control facility within an enterprise zone by certain business enterprises certified by the Department of Commerce and Community Affairs is exempt from the Retailers' Occupation Tax ('expanded enterprise zone pollution control exemption'). 35 ILCS 120/1e; 86 Ill. Admin. Code 130.1951(i).²

The phrase, pollution control facilities, is defined as:

any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term 'air pollution' or 'water pollution' is defined in the 'Environmental Protection Act', enacted by the 76th General Assembly, or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property. 35 ILCS 120/1a.

'Air pollution' is defined by the Environmental Protection Act as 'the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.' 415 ILCS 5/3.115. 'Water pollution' is defined by the same Act as '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 5/3.545.

The following examples of tangible personal property can be used or consumed in the operation of a pollution control facility and therefore qualify for the expanded enterprise zone pollution control exemption:

- A. fuel used in operating pollution control facilities;
- B. chemicals used in the operation of pollution control facilities;
- C. catalysts used in the operation of pollution control facilities;
- D. equipment used to test, monitor or otherwise ascertain the suitability of a fuel, chemical or catalyst for use in the operation of pollution control facilities;
- E. equipment used to test, monitor or otherwise ascertain the effectiveness of pollution control facilities;
- F. lubricants and coolants used in the operation of pollution control facilities;
- G. protective clothing and safety equipment used in the operation of pollution control facilities;
- H. equipment used to transport fuel, chemicals, catalysts, lubricants, coolants or other operational supplies from a stock pile located in the enterprise zone to a pollution control facility located in the same enterprise zone;
- I. equipment used to transport filtered, treated or modified pollutants from a pollution control facility in an enterprise zone to another pollution control facility within the same enterprise zone for further filtering, treatment or modification; and
- J. equipment used to transport filtered, treated or modified pollutants from a pollution control facility in an enterprise zone to a disposal site in the same enterprise zone. 86 Ill. Admin. Code 130.1951(i)(3).

For tangible personal property to qualify for the expanded enterprise zone pollution control exemption, the tangible personal property cannot be used primarily in any activity other than the operation of pollution control facilities within an enterprise zone, cannot be used or consumed outside the enterprise zone, and cannot be used or consumed in the operation of pollution control facilities that are located outside the enterprise zone. 86 Ill. Admin. Code 130.1951(i)(4).

A consumer eligible for the expanded enterprise zone pollution control exemption may make exempt purchases from any retailer registered to collect Illinois sales tax; the consumer is not restricted to retailers located in jurisdictions that have established enterprise zones. 86 Ill. Admin. Code 130.1951(i)(5). These purchases are similarly exempt from Illinois use tax. 35 ILCS 105/3-65; 86 Ill. Admin. Code 50.101(c) [sic]

Guidance from prior cases and rulings

Prior to June 30, 2003, sales at retail of pollution control facilities were exempt from Retailers' Occupation Tax without the limitation that the pollution control facility be located within an Illinois enterprise zone ('general pollution control exemption'). 35 ILCS 120/1a; 86 Ill. Admin. Code 130.335. The general pollution control exemption did not extend beyond the sale of property that was deemed to qualify as a component (or replacement part) of the pollution control facility. *Central Illinois Light Company v. Department of Revenue*, 336 Ill.App.3d 908, 271 Ill. Dec. 224, 784 N.E.2d 442 (2003); *Central Illinois Light Company v. Department of Revenue*, 335 Ill. App.3d 412, 269 Ill.Dec. 385, 780 N.E.2d 1109 (2002).

Initially, the Department of Revenue, in 86 Ill. Admin. Code 130.335, ruled that chemicals used at a pollution control facility were taxable. However, certain chemical consumables used in the pollution control process were held exempt by the courts as part of a method or system, see, e.g., *Columbia Quarry Company v. Department of Revenue*, 154 Ill.App.3d 129, 506 N.E.2d 795, 107 Ill.Dec. 52 (1987); *Wesko Plating*

Inc. v. Department of Revenue, 222 Ill App.3d 422, 164 Ill.Dec. 950, 584 N.E.2d 162 (1991). The Department of Revenue acquiesced in the *Wesko* decision, stating that it would extend the general pollution control exemption to chemicals 'purchased for use as part of a method or system, and as integral components, eliminate, prevent or reduce air or water pollution.' Letter Ruling ST 02-0018-GIL (January 22, 2002).

The introduction of the expanded enterprise zone pollution control exemption changed the tax status of chemicals and consumables. The new exemption provided under 35 ILCS 120/1e is available for all tangible personal property used or consumed by a business enterprise in the operation of pollution control facilities within an enterprise zone. Letter Ruling ST 11-0008-GIL (February 28, 2011). This new exemption specifically includes chemicals and catalysts. 86 Ill. Admin. Code 130.1951(i)(3)(B) & (C).

Both the general pollution control exemption and the expanded pollution control exemption use the same definition of 'pollution control facilities.' 35 ILCS 120/1a; 351LCS [sic] 120/1e. Additionally, the expanded exemption specifically includes chemicals and catalysts, even those which were not previously exempted as being part of a method or system. Therefore, Illinois court cases, private letter rulings and general information letters that made determinations under the prior exemption on whether tangible personal property used in a certain manner qualified as pollution control facilities for purposes of the general pollution control exemption provide guidance on whether similar tangible personal property used in a similar manner would qualify [sic] as pollution control facilities for the purpose of the expanded enterprise zone pollution control exemption. For example, if limestone used in a scrubber was exempt as part of a system or method under the general pollution control exemption, see, *Columbia Quarry, supra.*, the limestone should remain exempt as a chemical under the expanded pollution control exemption.

Past cases and private letter rulings have determined that sales of equipment and chemicals to commercial facilities (including coal fired electricity generating facilities), which were used by the commercial facilities to reduce air pollution and water pollution, could qualify as pollution control facilities and be exempt from Retailers' Occupation Tax under section ILCS 105/2a and Ill. Admin. Code 130.335. *Columbia Quarry, supra.*; *Wesko Plating, supra.*; Letter Ruling ST 02-0065-GIL (March 28, 2002); Letter Ruling ST 02-0029-GIL (January 31, 2002); Letter Ruling ST 02-0018-GIL (January 22, 2002); Letter Ruling ST 95-0075-GIL (February 21, 1995); Letter Ruling ST 95-0019-GIL (January 17, 1995); Letter Ruling ST 93-0573-GIL (November 8, 1993); Private Letter Ruling ST 90-0745-PLR (October 26, 1990).

However, the cases, private letter rulings and general information letters presented above, like many other Illinois cases, private letter rulings and general information letters, primarily address whether tangible personal property is exempt from Retailers' Occupation Tax under the general pollution control exemption and do not provide specific guidance on the specific types of tangible personal property that can qualify for exempt treatment under the expanded enterprise zone pollution control exemption.

DISCUSSION AND ANALYSIS

Airborne Pollutants

The COMPANY2 campus will include # coal-fired boilers to generate steam used to drive the turbines which generate electricity. The plant will be a major source for emissions of nitrogen oxides, sulfur dioxide, particulate matter, carbon monoxide, volatile organic materials and sulfuric acid mist. As such, the facility is subject to federal rules for Prevention of Significant Deterioration of Air Quality ('PSD'). Under these rules, Company is required to show that the Best Available Control Technology ('BACT') is used to control these emissions.

Each coal-fired boiler will be equipped with an add-on control train utilizing the following systems, the primary purpose of which is to minimize and control emissions: selective catalytic reduction to reduce emissions of Nitrogen Oxide; an electrostatic precipitator to control particulate matter; wet flue gas desulfurization to control sulfur dioxide emissions and a wet electrostatic precipitator to control sulfuric acid mist and condensable particulate matter.

Selective Catalytic Reduction ('SCR') is the most effective methodology under the BACT standard to control nitrogen oxide emissions. SCR is capable of reducing nitrogen oxide emissions in the range of 70% to 90%. SCR is a post-combustion process, using a catalyst at 650-800 degrees Fahrenheit to facilitate a reaction between the nitrogen oxide and injected anhydrous ammonia to produce nitrogen and water. The anhydrous ammonia is injected into ductwork downstream of the combustion unit. The ammonia combines with the flue gas and passes through screens impregnated with a catalyst. The catalyst impregnated screens are located within the ductwork.

Wet Flue Gas Desulfurization ('WFGD') has been determined to be the BACT for the high-sulfur Illinois basin coal used to fire the boilers at the facility. The WFGD desulfurization process, also known as scrubbing, uses a sprayed alkaline solution to react with and absorb sulfur dioxide, the pollutant, in the flue gas. The flue gas is ducted into a spray tower, where a slurry of limestone is injected into the flue gas. The sulfur dioxide dissolves into the slurry droplets and reacts with the alkaline particles. This reaction causes the formation of neutral sulfate salts, which are a solid and removed as a waste by-product. At greater than 90%, WFGD has the highest removal efficiency rating for the removal of sulfur dioxide. The construction permit was acquired for the coal-fired generation facility based on achieving 98% control of the sulfur present in the flue gas emissions. The primary purpose of the WFGD system is to remove the pollutant, sulfur dioxide, from air emissions.

The Dry Electrostatic Precipitator ('D-ESP') is the established control device methodology for Particulate Matter pollution control. This device will be used to remove 99.9% of particulates in the air stream. This device will also be used to remove as [sic] fluorine and mercury. The plant's coal burning operations create flue gases which contain fluorine and mercury. Activated carbon or a similar material is injected into the flue gas at a location in the duct prior to the point where the flue gas enters. The D-ESP binds the injected material to the mercury in the flue gas. The D-ESP captures the activated carbon which includes the mercury, a known pollutant, for removal. The injection of activated carbon into the flue gas offers the maximum practical degree of mercury removal. Lime or Sodium bicarbonate is also injected into the flue gas at the same point as the activated carbon, to bind with the fluorines contained in the flue gas.

The Wet Electrostatic Precipitator ('W-ESP') is a device that removes the pollutant sulfur dioxide mist from the flue gas using the force of an induced electrostatic charge. The flue gas is sprayed with an alkaline solution and then forced between high voltage

rods which impart a charge to the sulfur dioxide. The charged particles are then attracted to an oppositely charged plate, thus removing the pollutant from the flue gas.

Analysis

- Anhydrous Ammonia: Used in the SCR process to combine with the flue gas as it passes through a screen impregnated with a catalyst. The chemical reaction then reduces the nitrogen oxide back to nitrogen and water (which results in the remaining flue gas that will be released into the atmosphere having a lower amount of nitrogen oxide). As nitrogen oxide is a pollutant, the anhydrous ammonia is a chemical used directly in operating a pollution control facility. 86 Ill. Admin. Code 130.1951(i)(3)(B). Additional information about this chemical is attached as Exhibit C.
- Catalyst: Multiple screens impregnated with a catalyst of tungsten oxide and vanadium pentoxide are used to facilitate a chemical reaction between anhydrous ammonia and nitrogen oxide. The catalyst that will be used is tungsten oxide and vanadium pentoxide held in a ceramic matrix. The screens have a honeycomb shaped configuration. Over time, the catalyst will be consumed in the pollution control process and will need to be replaced because (1) metals from the ash and arsenic present in the flue gas will coat the catalyst and cause it to deteriorate, (2) the catalyst will erode from wear and tear and (3) heat from the SCR process overtime [sic] will cause damage to the physical configuration of the catalyst. Without the catalyst, the reaction between the ammonia and the pollutant, nitrogen oxide, would either not occur or would be significantly less efficient. The catalyst is necessary to the process to ensure that the proper levels of nitrogen oxide are removed from the flue gas, making the catalyst an indispensable part of the operation of the pollution control process. 86 Ill. Admin. Code 130.1951(i)(3)(C). Additional information about this chemical is attached as Exhibit D.
- Limestone: To control/reduce the pollutant sulfur dioxide, the WFGD system sprays the flue gas with an alkaline solution, the major ingredient of which is limestone. The alkaline solution reacts with and absorbs the sulfur dioxide in the flue gas to create sulfate salts, which are removed from the flue gas as solid waste by-products (which results in the remaining flue gas that will be released into the atmosphere having a lower amount of sulfur dioxide). The limestone directly interacts with the pollutant and is an integral part of the pollution control process. 86 Ill. Admin. Code 130.1951(i)(3)(B); see *Wesko Plating, supra*. (holding limestone used at a coal powered electricity generating plant to be exempt as a chemical used in a pollution control facility); Letter Ruling ST 02-0018-GIL (January 22, 2002). Additional information about this chemical is attached as Exhibit E.
- Powdered Activated Carbon (or other suitable material): To control/reduce the pollutant, mercury, powdered activated carbon (or other suitable material) is injected into the flue gas before the flue gas enters the D-ESP. The injected powdered activated carbon (or other suitable material) binds with the mercury in the flue gas, allowing the D-ESP to capture and remove the powdered activated carbon (or other suitable material) combined with the mercury from the flue gas (which results in the remaining flue gas that will be released into the atmosphere

having a lower amount of mercury). The pollution control equipment would not be able to remove the required levels of mercury from the flue gas without the use of the powdered activated carbon (or other suitable material), making it a chemical used in the operation of the pollution control process. 86 Ill. Admin. Code 130.1951(i)(3)(B). Additional information about this chemical is attached as Exhibit F.

- Lime or Sodium Carbonate (or other suitable material): To control/reduce the pollutant fluorine, lime or sodium bicarbonate (or other suitable material) is injected into the flue gas before it enters the D-ESP. The injected lime or sodium bicarbonate (or other suitable material) reacts with the fluorine in the flue gas, allowing the D-ESP to capture and remove the lime or sodium bicarbonate (or other suitable material) and fluorine from the flue gas (which results in the remaining flue gas that will be released into the atmosphere having a lower amount of fluorine). Without the lime or sodium bicarbonate (or other suitable material), the fluorine, a pollutant, could not be adequately removed from the flue gas, making this chemical a vital part of the pollution control operation. 86 Ill. Admin. Code 130.1951(i)(3)(B). Additional information about this chemical is attached as Exhibit G.
- Formic Acid: To control and reduce the pollutant sulfur dioxide, the WFGDS sprays the flue gas with an alkaline solution, the major ingredient of which is limestone. This solution uses water which becomes extremely alkaline because of the presence of the limestone. To reduce the pH of the water back towards neutral, Formic Acid is mixed with the water before it is recycled for reuse in the WFGDS. 86 Ill. Admin. Code 130.1951(i)(3)(B). Additional information about this chemical is attached as Exhibit H.

Waterborne Pollutants

The wastewater treatment facility at the plant will consume significant quantities of chemicals to treat wastewater for removal of pollutants prior to discharge of the treated water into the river. The chemical consumed in the wastewater treatment process is sodium hypochlorite.

Water used in the electrical generation and pollution control process has many chemicals, especially phosphorus, added to it which makes the water a ripe environment for the growth of microbial organisms. The concentrations of these organisms in the water are dangerous to the plant and animal life in the river into which the water is eventually discharged. In order to reduce the microbial organisms to acceptable levels, sodium hypochlorite is added to the wastewater to kill off the pollutant organisms.

Analysis

- Sodium hypochlorite is added to the water to assist in reducing microbial growth and reducing solids concentration in the water before the plant discharges the water into the river. Sodium hypochlorite is a biocide used to eliminate pollution generating organisms and is thus used in the operation of the pollution control facility. 86 Ill. Admin. Code 130.1951(i)(3)(B); *Wesko Plating, supra*. (exempting sodium hypochlorite as a chemical used in a pollution control facility). Additional information about this chemical is attached as Exhibit I.

A summary demonstration of the pollution control process is included in the attached video, attached as Exhibit J.

Conclusion

All of the chemicals and catalysts described above are used or consumed as a necessary part of the pollution control facility owned by the TIC Group and operated by Company. These materials qualify as tangible personal property used or consumed in the operation of pollution control facilities for purposes of the expanded enterprise zone pollution control exemption provided in 35 ILCS 120/1e because: (1) the TIC Group will meet the eligibility requirements of 35 ILCS 120/1f; (2) the materials will be used or consumed primarily in the operation of the pollution control facility; and, (3) the materials will be used or consumed at the facility, which is located within the enterprise zone, will not be used or consumed outside the enterprise zone, and will not be used or consumed in the operation of pollution control facilities located outside the enterprise zone.

We respectfully request that the Department issue a ruling stating that the materials described in this letter qualify as ‘tangible personal property used or consumed in the operation of pollution control facilities’ for the purposes of the exemption provided in 35ILCS [sic] 120/1e and 86 Ill. Admin. Code 130.1951(i).

If the Department cannot conclude that materials identified qualify as ‘tangible personal property used or consumed in the operation of pollution control facilities’ for the purposes of the exemption provided in 35 ILCS 120/1e and 86 Ill. Admin. Code 130.1951(i), we request that the Department contact us to determine what additional information is required or allow the taxpayer to rescind this ruling request.

DEPARTMENT’S RESPONSE:

The Certification issued by the Department of Commerce and Economic Opportunity for exemption from sales tax for tangible personal property to be used or consumed in the operation of a pollution control facility was issued to COMPANY. As a result, this letter ruling addresses the issues raised with respect to COMPANY only and does not include the “TIC Group” named in the letter.

Section 1e of the Retailers’ Occupation Tax Act provides that all tangible personal property to be used or consumed in the operation of a pollution control facility that is certified, as required under Section 1f of the Retailers’ Occupation Tax Act, by the Department of Commerce and Economic Opportunity both as meeting certain investment and job creation or retention criteria and as being located within an enterprise zone shall be exempt from Retailers’ Occupation Tax. See 35 ILCS 120/1e. The Administrative Rules adopted by the Illinois Department of Revenue to implement this exemption provide that if a business enterprise is so certified by the Department of Commerce and Economic Opportunity, all tangible personal property used or consumed by it in the operation of pollution control facilities within an enterprise zone are exempt from Retailers’ Occupation Tax. In order to qualify, the items must be used exclusively in the enterprise zone and the pollution control facility must be in the enterprise zone. See 86 Ill. Admin. Code 130.1951(i)(3). The rules go on to list items that are covered under the exemption. This list specifically includes chemicals used in the operation of pollution control facilities, and catalysts used in the operation of pollution control facilities. An item that is exempt from Retailers’ Occupation Tax is also exempt from Use Tax. See 35 ILCS 105/3-65.

The Retailers' Occupation Tax Act defines "pollution control facility" as "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "air pollution" or "water pollution" is defined in the "Environmental Protection Act", enacted by the 76th General Assembly, or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property." See 35 ILCS 120/1a.

COMPANY has been certified by the Department of Commerce and Economic Opportunity under Section 1e of the Retailers' Occupation Tax Act for exemption from sales tax on purchases of tangible personal property to be used or consumed in the operation of a pollution control facility within the County Enterprise Zone.

It is the Department's position that the purchase by COMPANY of limestone, anhydrous ammonia, catalysts of tungsten oxide and vanadium pentoxide, powdered activated carbon, lime or sodium bicarbonate, formic acid, and sodium hypochlorite that is used or consumed in a pollution control facility in the manner described in this letter and in supplemental information provided to the Department is exempt from Retailers' Occupation Tax and Use Tax. This ruling applies only to purchases made in accordance with the certification by the Department of Commerce and Economic Opportunity that COMPANY meets the requirements of Section 1e of the Retailers' Occupation Tax Act, and does not apply at any time after the certification is no longer in effect.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules, or the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.]

Sincerely,

Terry D. Charlton
Chairman, Private Letter Ruling Committee

TDC/SJM:mzk

¹ This means that the power plant is located near the entrance to the coal mine that provides the coal to fuel the power plant.

² The Department of Commerce and Community Affairs ('DCCA') was renamed the Department of Commerce and Economic Opportunity ('DCEO') in or around 2002.