

**STATE OF WISCONSIN
TAX APPEALS COMMISSION**

CITY OF GREEN BAY (P),

DOCKET NO. 06-M-146 (P)

Petitioner,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE

Respondent,

and

GREEN BAY PACKAGING, INC.,

Intervenor.

DAVID C. SWANSON, COMMISSIONER:

This matter comes before the Commission on a stipulation of facts filed jointly by Petitioner, Respondent and Intervenor. Petitioner, the City of Green Bay, a Wisconsin municipality (the "City"), appears by Attorney Robert Horowitz of Stafford Rosenbaum LLP and City Attorney Jerry H. Hanson. Respondent, the Wisconsin Department of Revenue (the "Department"), appears by Attorney Donald J. Goldsworthy. Intervenor, Green Bay Packaging, Inc., a Wisconsin corporation ("GBP"), appears by Attorney David J. Edquist of von Briesen & Roper, S.C.

On January 12, 2007, the parties filed a stipulation of facts (the "Stipulation"). The stipulated facts are included herein as findings of fact in paragraphs 1 through 55, substantially in the form agreed to by the parties. Exhibit A to the

Stipulation provides a glossary of terms with definitions agreed to by the parties, which are included below in paragraph 56. Certain additional facts that the Commission deems relevant are included as findings of fact in paragraph 57.

Having considered the entire record before it, the Commission finds, concludes, decides and orders as follows:

Jurisdictional Facts

1. On June 20, 2005, The Department issued a Real Estate Assessment Notice to GBP, assessing GBP's "Green Bay Mill" located at 1601 North Quincy Street, Green Bay, Wisconsin, real estate computer number 81-05-231-R003000. The Green Bay Mill was assessed as of January 1, 2005 for the tax year 2005. The Department assessed the Green Bay Mill in the total amount of \$4,954,900, consisting of \$874,200 for land and \$4,080,700 for improvements.

2. On August 9, 2005, GBP timely filed a form of objection to the real estate assessment, asserting that the Green Bay Mill qualified to be exempt under Wisconsin Statutes § 70.11(21) as property used in recycling operations.

3. On March 28, 2006, the State Board of Assessors issued a Notice of Determination in Appeal No. 823-81-R-05, revising the full value assessment to Zero Dollars.

4. On May 26, 2006, The City timely filed a Petition for Review of the Determination by the State Board of Assessors with the Commission. This appeal was assigned Docket No. 06-M-146.

5. On June 23, 2006, GBP timely filed a Notice of Motion and Motion

to Intervene in this matter. This Motion to Intervene was granted by the Commission on July 31, 2006.

GBP and Its Business

6. GBP is a privately held corporation founded in 1933, with headquarters located in Green Bay, Wisconsin.

7. GBP consists of 29 divisions operating in 15 states, and employs approximately 3,000 persons throughout its various manufacturing and operational facilities. GBP manufactures corrugating medium, linerboard, corrugated shipping containers, folding cartons, pressure-sensitive roll label stock, and lumber products. It is one of the largest privately-held corrugated manufacturers in the United States.

8. GBP has two paper mills: the Green Bay Mill, which is the subject of this appeal; and GBP's Arkansas Kraft Mill. The paper mills manufacture containerboard (linerboard, corrugating medium or both), which is supplied to GBP's corrugated box plants as well as to other corrugated box manufacturers. The Green Bay Mill consists of a recycled fiber pulping operation and paper mill that manufactures 100% recycled linerboard and corrugating medium. The Arkansas Kraft Mill produces white-top and virgin kraft linerboards using both recycled and virgin fiber sources. (A glossary of industry terms used herein is provided in ¶ 56, below.)

9. This appeal relates to GBP's operations involving the real estate and improvements at GBP's Green Bay Mill. The City challenges the Department's determination that this property is totally exempt from taxation under § 70.11(21). Most of the equipment employed by GBP at the Green Bay Mill, as discussed herein, is

already entitled to an exemption under § 70.11(27) as manufacturing machinery and equipment.

Green Bay Mill Operations

10. GBP's Green Bay Mill manufactures linerboard and corrugating medium (together, the components of containerboard) with 100% recycled fiber. The Green Bay Mill is a closed process water (also referred to as a "closed-loop"), non-bleaching, and 100% recycled containerboard mill, and is one of the first 100% closed process water system paper mills in the world. A description of the closed-process water system is set forth in ¶ 45(C), below.

11. The layout of the Green Bay Mill property is depicted on Exhibit B to the Stipulation, and a visual overview of the Green Bay Mill operations is set forth on the Functions Operating Plan attached as Exhibit C to the Stipulation, with north oriented at the top of that Exhibit.¹ On the property is a recycled fiber pulping operation facility and paper mill, including one "papermachine" (defined in paragraph 30 below) that makes both linerboard and corrugating medium from 100% recycled fibers. The property also has a coal-fired boiler in the boiler room that provides steam to the dryer section of the papermachine to dry the recycled linerboard and corrugating medium. The combustion emissions generated by the coal fired boiler are sent through a baghouse adjoining the boiler room. The baghouse removes 99% of the particulate from the combustion emissions using a bag filter technology. The Green Bay Mill has a maintenance area and sheet metal shop in which mill equipment can be repaired. The

¹ Exhibits B and C to the Stipulation are incorporated herein by reference.

driveways, yard, and staging lots are used to receive and store incoming recycled fiber and waste paper trailers. The employee parking area has been improved with asphalt paving and fencing. All of these areas are depicted on Exhibits B and C to the Stipulation, and are discussed in more detail in ¶¶ 16 through 44, below.

12. The Green Bay Mill occupies 36.795 acres of property (approximately 1,603,000 square feet). The Green Bay Mill operations may generally be divided into six separate areas, shown on Exhibit C as the Main Office and Areas A, B, C, D and E. The specific areas noted on Exhibits B and C occupy the following space:

- A. Area A: 28,732 square feet;
- B. Area B: 38,178 square feet;
- C. Area C: 16,820 square feet;
- D. Area D: 28,942 square feet;
- E. Area E: 9,156 square feet;
- F. Parking areas for trailers containing recycled fibers: 160,000 square feet;
- G. Shipping Building: 11,864 square feet;
- H. Main Office: 9,838 square feet;
- I. Employee parking lot: 67,200 square feet; and
- J. Parking lot for trailers containing recycled product: 100,000 square feet.

The figures for the areas listed in subparagraphs A through H, above, represent the square footage of each area's footprint only, and are not intended to represent the total

square footage of any building or area.

13. The Green Bay Mill operates 7 days a week, 24 hours a day, with scheduled maintenance outages approximately every 49 days to change papermachine clothing and maintain finished product quality. Most of the recycled and waste fibers the mill uses to make its containerboard are purchased by GBP. These recycled and waste fibers consist of several classifications, including OCC (old corrugated containers), DLK (double-lined kraft clippings recycled from box plants), boxboard (non-corrugated post consumer box products), core (recycled hogged cores) and papermachine trim and waste rolls recycled from GBP's own processes. Overall, the raw material used by the Green Bay Mill consists of approximately 90% to 95% post-consumer recycled fiber (OCC, boxboard and core), with the balance in DLK (primarily from its own container plants). The majority of the recycled fiber the mill receives is in the form of bales. Bales are approximately 1,000 pounds and bound with wire. Recycled/waste fiber may be received in roll form and slit with a roll guillotine, or in other forms, at the discretion of GBP's Fiber Procurement Manager.

14. The Fiber Procurement Manager procures recycled/waste fiber from a variety of sources for the Green Bay Mill. The recycled/waste fiber suppliers are audited periodically to ensure the fiber meets the quality requirements of the Green Bay Mill. Recycled fiber that is found to be substandard may be rejected and returned or brokered at the discretion of the Fiber Procurement Manager.

15. The operations in the Main Office and Areas A, B, C, D and E are more fully described in paragraphs 16 through 42, below.

Main Office

16. The following functions are performed in the Main Office:
 - A. Recycled fiber is purchased by the Fiber Procurement Manager.
 - B. Environmental evaluations and compliance documents are maintained by the Environmental Manager.
 - C. Orders for recycled product are received, processed and planned.
 - D. The Customer Service Department and Quality Department review concerns with recycled product or process.

Area A: Recycled/Waste Fiber Receiving Area

17. Area A of the Green Bay Mill is used for bale storage, bale unloading, and houses the "Phoenix" press and rejects screw.

18. Fiber is received at the Green Bay Mill via truck. Approximately 40 truckloads per day of recycled fiber paper bales are unloaded in this area. Trucks delivering fiber enter on the north gravel road of the property and stop at the scale office to receive appropriate documents prior to proceeding to the bale unloading area. Fork lift drivers remove the recycled/waste fiber bales and stage them in the bale storage area located to the west of the bale unloading pad, or put the bales directly on the conveyor system to the pulpers. Bales are staged, inspected, and sorted for quality as follows:

- A. The Fiber Procurement Manager educates employees of

recycled waste fiber generators and collectors on the fiber and bale specifications required by the Green Bay Mill. Employees of the Green Bay Mill and of fiber generators and collectors are educated on preventing contaminant materials from being mixed in with the recycled fiber bales. Contaminants may include wax, metal, plastic, Styrofoam, food and cellophane. Fiber generators' and collectors' employees are also taught how to distinguish between conforming and nonconforming fiber materials.

B. Depending on the quantity of recycled waste fiber necessary, GBP may hire a crane-equipped flatbed truck to collect bales from various recycled waste fiber generators and deliver them to the Green Bay Mill (if the bales meet the Mill's quantity and quality requirements), or broker the bales to another unrelated mill (if they are excess, or do not meet quality requirements).

C. The recycled waste fiber bales delivered to the Green Bay Mill may be stored in trailers in the yard. As needed, the scale office personnel are directed to send in the desired trailers of recycled waste fiber for unloading.

D. GBP pays the recycled/waste fiber suppliers at predetermined rates based on the weight and quality standards of the fiber they supply. If GBP determines that the quality of the recycled waste fiber or bale is substandard, it may reject either the bale or the entire trailer load of bales. The bales may be returned to the generator or brokered to another unrelated mill that may be able to utilize lower-grade recycled waste fibers, depending on the original agreement between the Fiber Procurement Manager and the generator.

19. Area A also includes the “Phoenix” press, “rejects screw” and “rejects loading” area. These are discussed in paragraph 23 below.

Area B: Recycled Fiber Cleaning, Screening and Preparation Area

20. Area B of the Green Bay Mill involves the bale conveyers, the pulpers, cyclones, several ultrascreens, the “Krofta,” and the “Finckh” fine screens. This equipment is used to convert paper bales into fiber slurry and remove contaminants.

21. Once the fiber is sorted and deemed to be of acceptable quality, the recycled fiber paper bales are loaded onto one of the two conveyors adjacent to the bale unloading area. Small “inverted v” shaped metal bars on the conveyor system cut the wires on the bales. The bales with the cut wires are conveyed into one of the two continuous pulpers.

22. The continuous pulpers are essentially large blenders, which use recycled process water to turn the recycled fiber bales into a recycled fiber pulp slurry of 3-4% consistency (3-4% recycled fiber, 96-97% recycled process water). The swirling motion of the blenders allows a device called the ragger to reclaim the wires from the pulp slurry.

23. The pulp slurry is passed through several pieces of equipment which remove contaminants. The contaminants include rejected fiber and plastics. Initially the rejects are in a single mixed stream of rejected fiber and plastic. The streams are then separated into a single rejected fiber stream and a single rejected plastics stream. Both streams are individually sent to the rejects collection and loading

A. The rejected fiber stream is passed over a moving wire or screen conveyor on the “Phoenix Press” to dewater it. After passing through the Phoenix Press the reject fiber is then sent to the rejects screw, an auger-type device that further dewateres the fiber and forms a pile of reject fiber in the rejects loading area. A portion of the reject fiber is purchased by a paperboard/core manufacturing business which prevents it from being landfilled. Reject fiber that is not purchased is delivered to a landfill.

B. The stream of rejected plastics is sent to a compacting device which squeezes excess water from the plastic contaminants and a conveyor delivers the rejected plastic to a landfill bin.

24. The pulp slurry then moves through a series of cyclones to remove heavy contaminants such as staples and other heavy contaminants. “Cyclones” are machines that use centrifugal force to separate contaminants from the pulp slurry. The slurry then passes to the ultrascreens which also coarse-screen the slurry to remove sand, grit and other heavier-than-fiber contaminants. Then the slurry is separated into two streams, the “base stock,” which forms the base ply of the 2-ply sheet, and the “top stock,” which forms the top ply of the 2-ply sheet. The base stock makes up approximately 2/3 of the fiber weight and the top stock makes approximately 1/3 of the fiber weight. The base stock is sent to the Finckh fine screens for further contaminant removal. The top stock is sent through a three-step series of cyclone

cleaners located on a mezzanine of Area B that is not pictured on the diagram in Exhibit C. The first of this three-step series removes sand and grit. The second and third steps of the cyclones remove waxes, Styrofoam and stickies (contaminants from tapes and coatings found in post consumer fiber sources).

25. As of January 1, 2005, the Krofta unit was used to reclaim recycled fiber in the water system and clean the water to be used on the papermachine. The Krofta unit is not labeled on Exhibit C, as GBP is in the process of phasing out the use of the Krofta, but the unit is depicted as an open circle in the northwest corner of Area B located between the “ramp” and the “control room.”

26. Area B also includes chemical storage, clarifier and refiners. The chemical storage system is used to house a variety of recycled fiber additives, which enhance the finished recycled paperboard’s quality properties. These properties include water hold-out, strength, odor prevention, and stackability, all of which are critical to meeting quality specifications.

27. The refiners located to the west and southeast of the lab are also used in recycled fiber development. The refiners are mechanical devices through which recycled fibers are passed to enhance their bonding strength. The refiners brush or “rough” the fibers, creating more bonding sites and improving the final strength of the recycled containerboard.

28. The clarifier is located in the southwest corner of Area B. The clarifier is a dual purpose device: it reclaims any recycled fibers from the water system, and is used to clean process water. The process water is passed through the clarifier’s

large vat and air is injected into the underside of the vat, causing dispersed fibers to be bubbled up to the top fiber sludge layer. The fiber sludge layer is removed with a baffle system and sent back to the recycled fiber system. The clarified water is then sent to the process water system for further use.

29. The Green Bay Mill also has a lab located in Area B. The lab's purposes include monitoring and meeting environmental permit conditions. In addition, the lab is used for evaluating incoming fiber sources by making hand sheets, carrying out various quality and environmental studies, and receiving chemical additives.

30. Finally, Area B includes a top stock chest and a base stock chest. These chests are used as holding areas for top stock and base stock. The T.S. (top stock) chest is a storage area for the fiber slurry used to make the top ply of the sheet. The top stock consists of recycled fibers that are sent through more vigorous cleaning to remove waxes and stickies. The B.S. (base stock) chest is another storage area, in this case for the fiber slurry that is used to make the base ply of the sheet. Both chests serve to maintain proper slurry levels in order to keep the flow to the papermachine stable.

31. Once the fiber slurry leaves Area B, the process of cleaning and screening the recycled pulp slurry and contaminants is essentially completed. No further treatment is performed to remove impurities other than water, except for some "stickies" that continue to be captured in the papermachine as described below.

Area C: Maintenance and Maintenance Offices

32. The maintenance shop, maintenance offices, and sheet metal shop

are the areas used to store tools and other supplies used to repair all of the fiber processing and other equipment housed throughout the Green Bay Mill.

Area D: Papermachine, Winder and Shipping

33. Area D includes the papermachine, the reel, and the winder. The papermachine consists of various adjoined sections as depicted on Exhibit C: the fourdrinier, press, dryers and calender (all collectively referenced in this stipulation as the “papermachine”). The papermachine takes the fiber slurry and forms it into a useable paper sheet. The vast majority of the Green Bay Mill’s process water is recycled during the operation of the papermachine. The only process water that is not recycled back to the closed-loop process water system is the water that evaporates in the dryer section.

34. When the pulp slurry enters the papermachine area (Area D) from Area B, the recycled fibers have been cleaned and prepared for the paper-making process. The process starts at the fourdrinier section of the papermachine. The slurry is delivered to the fourdrinier’s moving wire system via the primary headbox located at the west end of the fourdrinier, at approximately 1% consistency (1% recycled fiber and 99% recycled process water solution). The wire mesh revolves around the fourdrinier section conveying the recycled fiber solution across the fourdrinier table toward the secondary headbox where the top ply will be added. The fourdrinier removes water from the pulp with gravity, hydraulic forces, and a slight vacuum from vacuum boxes located beneath the wire. This forms the base ply of the recycled sheet. At the east end of the fourdrinier section, the secondary headbox adds the top ply of the paperboard.

35. The 2-ply (combined base and top ply sheet) then enters the press section of the papermachine. As the sheet moves into the press section it is at approximately 24% recycled fiber and 76% recycled process water. The sheet passes through the first press, a traditional nip style press, which applies approximately 500 pounds of pressure per lineal inch of the sheet. Then the sheet passes through an extended nip press, which applies 6000 pounds of pressure per lineal inch of the sheet. The sheet exits the press section of the papermachine at a consistency of 50% recycled fiber and 50% recycled process water. Beneath the fourdrinier section and press section of the papermachine, large volumes of recycled process water are collected from the dewatering process of the recycled pulp slurry. The water collected from the papermachine is recycled in GBP's closed loop recycled process water system, rather than being discharged into the nearby Fox River.

36. The sheet then enters the dryer section of the papermachine. The dryer section consists of a series of steam-filled cans, and uses heat to evaporate the excess moisture and to take the sheet to its final moisture level of approximately 93% recycled fiber and 7% water.

37. The sheet then moves to the calender section of the papermachine. The calender smoothes out the sheet and creates uniform thickness (known as "caliper"). The sheet moves from the calender and builds onto a parent reel. When the calender reaches the full size the reel "turns-up" and a new parent reel is started. The completed parent reel is transported to the winders using a rail system.

38. When the parent reel reaches the winder, slitter blades are set to the

predesignated roll width size and cut the (large) parent reel of recycled containerboard into smaller desired roll sizes. The edge trim from the winder is sent down to the repulper in the basement below the winder via trim chutes. The trim is then added to recycled process water and turned into pulp slurry and used as a source of recycled fiber for the mill (see paragraph 13 above).

39. Area D also includes the shipping area, which assigns a unique number to each roll for tracking purposes. The rolls are banded and labeled, and put onto trucks for delivery. Approximately 96% of the rolls of paper from the Green Bay Mill are sent to GBP's corrugated box plants, and 4% are sent to outside customers.

40. The Green Bay Mill employs a closed-loop process water recycling system, discussed in more detail at ¶ 45(C), below. This system recovers process waters through various stages of operations at the Green Bay Mill. The vast majority of process water recovery occurs in Area D, as the fiber slurry is reduced from 99% water content down to 7% water content. Fourteen million gallons of process water per day are captured by the closed loop system and recycled for re-use at the Green Bay Mill, rather than discharged into the Fox River.

Area E: Boiler Room and Baghouse

41. Area E includes the boiler and baghouse. The boiler is a standard spreader stoker coal-fired boiler used to generate the steam for the dryer section of the papermachine, which dries the recycled containerboard to the final moisture levels as described above.

42. The boiler room and baghouse also contain "multicyclones," which

use centrifugal force to remove large particles from the combustion emissions prior to entering the baghouse. After passing through the multicyclones the combustion emissions are routed through the baghouse. The baghouse removes 99% of the particulate from the gaseous emissions generated by the coal combustion process. The baghouse is necessary to meet environmental air standards.

43. Truck storage is used around the mill for incoming waste paper storage.

44. The Green Bay Mill also has water storage throughout the mill and in an area to the west of the Green Bay Mill buildings, which houses up to one million gallons of recycled process water necessary to take the fiber slurry down to the proper consistency. This recycled process water storage makes the Green Bay Mill's closed-loop process water system possible.

Recycling Functions at the Green Bay Mill

45. GBP began recycling OCC in the late 1950s. By 1974, GBP achieved process water closure of the Green Bay Mill while producing 50% recycled corrugated medium. In 1988, GBP made the decision to rebuild the Green Bay Mill and convert it from a producer of 50% recycled corrugated medium to 100% recycled containerboard. This project was completed over three phases between 1989 and 1991, at a cost of \$40 million.

A. Phase I involved the rebuild of the papermachine dryer section. As part of Phase I, GBP made several upgrades to its wastepaper cleaning system in preparation for the mixture of post-consumer OCC, mixed

waste, and DLK clippings from its box plants.

B. In connection with Phase II of the conversion, GBP completely changed over to 100% recycled containerboard production by 1991. This 100% recycled containerboard is used by GBP's box plants throughout the North and Midwest, as well as by various external customers.

C. Phase III involved re-closure of the process water system. The Green Bay Mill operates with a closed process water system. Process water is not discharged from the mill, there is no connection to a municipal water treatment plant, and there is no onsite water treatment facility. This technology was first developed by GBP in the early 1970s while manufacturing 50% recycled corrugated medium. When the decision was made to rebuild the Green Bay Mill to manufacture 100% recycled containerboard, the conversion was accomplished in such a manner to allow reclosure of the process water system by September 1992. Since September 1992, GBP's process system has been closed.

46. GBP has established its own brokerage department to assist in procuring post-consumer OCC.

History of Pollution Prevention Efforts at Green Bay Mill

47. GBP is a founding member of the Wisconsin Paper Council's Pollution Prevention Partnership.

48. By February 1991, GBP permanently shut down its pulp-making operations at its Green Bay Mill and converted to a 100% recycled fiber mill. As a result of this conversion, all environmental emissions associated with on-site pulping

operations were eliminated.

49. During 2003, 2004 and 2005, 218,838, 234,558 and 239,620 tons of waste paper respectively were diverted from the deposit into landfills and recycled into containerboard at the Green Bay Mill. The United States Environmental Protection Agency, in a 1974 report to Congress, provided figures indicating that recycling a single ton of paper results in the following environmental impacts:

- A. conserving 14,000 gallons of water;
- B. reducing energy consumption by 12 million British thermal units;
- C. reducing air pollution effluents by 62 pounds;
- D. reducing biochemical oxygen demand ("BOD") and total suspended solids ("TSS") waterborne waste discharges by 12 pounds and 4 pounds, respectively;
- E. generating 52 fewer pounds of process solid waste; and
- F. reducing net post-consumer waste generation by approximately 1.1 tons.

These figures are calculated from a table in the report. A copy of the cover page and page 7 of the report, containing this table, is attached as Exhibit D to the Stipulation, which is incorporated herein by reference.

50. In September 1992, the Green Bay Mill became one of the first mills in the world to have a closed-process water system. This system eliminates any direct discharges of wastewater from the papermaking process into the Fox River.

51. As of September 2006, the Green Bay Mill achieved its sixteenth year without any direct discharges of wastewater from the papermaking process into the Fox River.

52. The Green Bay Mill's closed loop system, along with continued monitoring of water levels and other conservation technologies, has significantly reduced water usage at the Green Bay Mill. During 2002, paper mills nationally utilized on average approximately 10,800 gallons of water for each ton of paper produced. The Green Bay Mill used 2,285 gallons/ton in 2002, 2,291 gallons/ton in 2003, 2,246 gallons/ton in 2004 and 1,964 gallons/ton in 2005.

53. GBP has received wastewater discharge permits for its Green Bay Mill operations from the Fox River. Those permits set limits for, among other things, BOD and TSS at 2,585 and 3,268 pounds per day on a monthly average, respectively, in the year 2005. In 2005, GBP's actual pounds per day of BOD and TSS averaged 158 and 331, respectively. The BOD and TSS net pounds per day averaged 152 and 41, respectively, when netting out the incoming water BOD and TSS. In 2004, actual pounds per day averaged 209 for BOD (200 net) and 358 (116 net) for TSS. This wastewater consists of water from the Fox River that comes into the mill and is used to seal the vacuum pumps, then exits back to the river; it is not used in the papermaking process and is not considered part of the process water system.

54. GBP has received numerous commendations and awards:

A. In 1968, GBP received the Brown County Conservation Alliance Award for "outstanding contributions to the cause of conservation in

the State of Wisconsin.”

B. In 1971, the Wisconsin Legislature issued a commendation to GBP for research in the field of environmental protection.

C. In 1973, the National Sports Foundation recognized GBP with its National Gold Medal Award (Finalist) for “outstanding achievement in the fight against water pollution.”

D. In 1979, the Isaak Walton League of America Inc. gave GBP its Clean Water Award in recognition of “exemplary water quality improvement efforts which help to build a better outdoor America.”

E. In 1991, GBP received the Wisconsin Business Friend of the Environment Award from the Wisconsin Environmental Working Group (“WEWG”), an affiliate of the Wisconsin Manufacturers & Commerce, “in recognition of responsible environmental leadership demonstrated through pollution prevention programs.”

F. Also in 1991, GBP received the President’s Environment and Conservation Challenge Award from President Bush for “excellence in developing innovative solutions to the Nation’s environmental challenges.”

G. In 1992, the Wisconsin Natural Resources Board bestowed on GBP the John C. Brogan award for “Outstanding Environmental Achievement.”

H. In 1994, GBP received the Massachusetts Packaging Challenge Award from the Commonwealth of Massachusetts Department of

Environmental Protection.

I. Also in 1994, GBP received another Wisconsin Business Friend of the Environment Award from WEWG “in recognition of innovative environmental technology.”

J. In addition, in 1994, GBP received the Brown County Conservation Alliance Award for “Zero Discharge for One Year.”

K. In 1994, GBP received the Clean Bay Backer Award from the Green Bay Remedial Action Plan Implementation Committee, for outstanding “efforts to improve the water quality, habitat and recreational opportunities of the Lower Green Bay and Fox River.” This award was based on the company’s closed-loop wastewater recycling system, and the facts that the company had no direct process wastewater discharges to the environment for the preceding year and did not use any wastewater treatment plant.

L. In 1998, GBP and the George Kress Foundation (a foundation established by GBP) received the Trees for Tomorrow Award for “outstanding service to natural resources education and the Trees for Tomorrow Natural Resources Education Center.”

M. In April 2005, GBP received an award for waste minimization from Brown County, Wisconsin for removing 2,000 tons per month of rejected fiber from area landfills.

55. The Green Bay Mill generates the following waste streams:

A. Fiber and plastic rejects, as referenced in paragraph 23,

which are either sold for recycling or are landfilled. Until September 2004, the rejects stream included both fiber and plastics; GBP began separating plastics from the fiber at that time. In 2004, GBP sent approximately 13,000 tons of fiber and plastic rejects to a landfill; GBP sold approximately 3,745 tons of reject fiber for beneficial re-use. In 2005, GBP sent approximately 208 tons of reject fiber and 4,300 tons of plastic to a landfill. Also in 2005, GBP sold approximately 23,000 tons of reject fiber to Wisconsin Paperboard, of which Wisconsin Paperboard used approximately 13,800 tons and sent the remaining approximately 9,200 tons to a landfill.

B. Ash from the boiler. In 2004, GBP sent approximately 725 tons of ash to a landfill, while another 3,066 tons of ash was beneficially used through sale to Wisconsin Public Service Corporation. In 2005, GBP sent approximately 4,200 tons of ash to a landfill; due to a more efficient coal-burning process implemented by GBP in the latter part of 2004, the ash generated in 2005 had a lower BTU content and therefore was no longer economically feasible to re-use.

C. Small quantities of solvents and paint wastes, which are recycled.

D. Industrial wastes (office trash, etc.). In 2004 and 2005, GBP sent approximately 2,640 and 2,000 tons, respectively, of industrial waste to a landfill.

E. Wastewater discharged into the Fox River as described in

paragraph 53.

56. As used herein, the following terms have the indicated meanings, as agreed by the parties:

A. Board: Abbreviation for various paperboards (see also: boxboard, chipboard, containerboard, corrugated board, fiberboard, linerboard and paperboard).

B. Boxboard: The types of paperboard used to manufacture folding cartons and set up (rigid) boxes.

C. Chipboard: A paperboard generally made from recycled paper stock. Uses include backing sheets for padded writing paper, partitions within boxes and the center ply or plies of solid fiberboard.

D. Containerboard: The paperboard components (linerboard, corrugating material and chipboard) used to manufacture corrugated and solid fiberboard. The raw materials used to make containerboard may be virgin cellulose fiber, recycled fiber or a combination of both.

E. Corrugated Board or Corrugated Fiberboard: The structure formed by gluing one or more sheets of fluted corrugating medium to one or more flat facings of linerboard.

F. Corrugating/Corrugated Medium: The type of paperboard used in forming the fluted portion of corrugated board.

G. Fiberboard: A general term describing combined paperboard (corrugated or solid) used to manufacture containers.

H. Hogged Cores: A source of recycled fiber, consisting of shredded bailed core stock, which contains chipboard and kraft linerboard, as used in the core of full paper rolls.

I. Kraft: designates pulp, paper or paperboard produced from wood fibers by the sulfate process. Kraft has a characteristic light brown appearance.

J. Linerboard: Paperboard used for the flat outer facings of combined corrugated fiberboard, and the outer plies of solid fiberboard.

K. Nip Press: The nip press removes moisture from the paper sheet through the use of rollers and press "felts." The presses are configured with one of the press rolls in a fixed position, with a mating roll being loaded against this fixed roll. The "nip" is the squeeze point between the rolls. The sheet runs through the nips of the press rolls and continues around a felt run, normally consisting of several felt rolls. During the dwell time in the nip, the moisture from the sheet is transferred to the press felt. When the press felt exits the nip and continues around, a vacuum box applies vacuum to the press felt to remove the moisture so that when the felt returns to the nip on the next cycle, it does not add moisture to the sheet.

L. Paperboard: One of the two major product categories of the paper industry. Includes the broad classification of materials made of cellulose fibers, primarily wood pulp and recycled paper stock, on board machines. The major types are containerboard and boxboard. (The other major product group of the paper industry is paper, including printing and writing papers, packaging papers, newsprint and tissue.)

M. Pulp: The mixture of wood fibers obtained by chemical cooking or by the mechanical treatment of wood consisting of cellulose with varying amounts of other materials found in wood.

Additional Facts

57. Pursuant to the preamble of the Stipulation, the parties agreed that “this Stipulation of Facts and the attached exhibits shall constitute the entire record of the case.”

CONCLUSIONS OF LAW

1. Areas A, B, D and E and all closed-loop process water recycling system storage facilities of the Green Bay Mill are exempt from property tax as waste treatment facilities under Wis. Stat. § 70.11(21)(a).

2. Excluding Areas A, B, D and E and all closed-loop process water recycling system storage facilities, the remaining portions of the Green Bay Mill, including Area C, the Main Office, the Shipping Building and parking areas, are not exempt from property tax under Wis. Stat. § 70.11(21)(a).

OPINION

I. Introduction

This case involves the City's appeal of the Department's 2005 assessment of certain manufacturing and related property of GBP located in the City, referred to herein collectively as the "Green Bay Mill." At the Green Bay Mill, GBP manufactures paper products, specifically paper sheets, linerboard and corrugated medium, which are components of containerboard. GBP also recycles certain paper products at the Green Bay Mill by converting them into pulp slurry, which is then used in the Green Bay Mill's manufacturing process.

For 2005, the Department issued a manufacturing property assessment notice to GBP on June 20, 2005, assessing the Green Bay mill in the total amount of \$4,954,900 as of January 1, 2005, including \$874,200 for land and \$4,080,700 for improvements (the "assessment"). On August 9, 2005, GBP filed a timely objection to the assessment with the State Board of Assessors, arguing that the Green Bay Mill qualified for a total exemption under Wis. Stat. § 70.11(21)(a) as interpreted in the *Newark Group* case. See, *The Newark Group, Inc. v. Wis. Dep't of Revenue*, Nos. 99-R-70, 99-R-72 through 99-R-83, and 00-M-44 through 00-M-48, Wis. Tax Rptr. (CCH) ¶ 400-740 (WTAC Mar. 22, 2004) and Wis. Tax Rptr. (CCH) ¶ 400-761 (WTAC June 2, 2004), *aff'd in part and rev'd in part*, Nos. 04-CV-1192, 04-V-1468, 04-CV-1736, 04-CV-1941, Wis. Tax Rptr. (CCH) ¶ 400-809 (Dane Co. Cir. Ct. Jan. 31, 2005) (collectively, "*Newark Group*").

The State Board of Assessors agreed with GBP and reduced the assessment of the Green Bay Mill to zero. The City then filed this petition for review

with the Commission objecting to the Department's revised assessment, and GBP filed a motion to intervene, which the Commission granted. After filing the Stipulation, the parties filed briefs, and then presented oral arguments to the Commission on June 25, 2007.

II. GBP's Motion to Strike

In conjunction with its brief filed on April 20, 2007, GBP filed a motion to strike portions of the City's brief. Specifically, GBP requested that the Commission strike from the City's brief Appendices 1, 2 and 3, as well as all references to these Appendices contained in the brief.² Appendices 1 and 2 consist of documents that generally address the number and amount of pending property tax exemption claims made by various taxpayers in response to the *Newark Group* decision. Appendix 3 includes a Special Report prepared in October 2006 by the Tax Foundation generally discussing the importance of property tax to state and local governments in the U.S., including Wisconsin. In its briefs, the City relies on these documents to emphasize the threat posed by these claims of significant losses in projected tax revenues to affected Wisconsin municipalities.

GBP's motion is based primarily on the preamble of the Stipulation, which provides that the Stipulation and attached exhibits "shall constitute the entire record of the case." The Appendices at issue are not included in the Stipulation. GBP further notes that the document included in Appendix 2 was not included in the Stipulation due to GBP's earlier objection to that document, and that the City requested that the

² Including page 4, paragraphs 3 and 4; page 5, paragraph 1; and page 38 and the carryover paragraph on page 39 of the City's Brief.

Stipulation include the language limiting the record in this case to the Stipulation. (Affidavit of David J. Edquist dated April 19, 2007, ¶¶ 3-5.)

To escape the limitation imposed by the Stipulation, the City argues that the Appendices “are intended to support the argument, not to be part of the record.” (City Brief at p. 4, n. 2.) However, the City’s argument is more than a little disingenuous, since it also authenticates Appendices 1 and 2 with affidavits, making them bases for findings of fact and a potential part of the record.

In its Reply Brief, the City further argues that these Appendices are presented to the Commission as legislative facts, not adjudicative facts. “Adjudicative facts are facts about the parties and their activities, businesses and properties, Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law, policy, and discretion.” *Westring v. James*, 71 Wis. 2d 462, 474, 238 N.W.2d 695 (1976); see also *State v. Barnes*, 52 Wis. 2d 82, 87 n. 2, 187 N.W.2d 845 (1971); Ralph Adam Fine, *Fine’s Wisconsin Evidence* at 902-3 (1975).

GBP correctly states that the Stipulation is binding on the parties. Wis. Stat. § 807.05. Moreover, the facts that the City attempts to introduce via Appendices 1, 2 and 3 are largely beyond the scope of this matter, since they mainly involve the completely unrelated claims of other taxpayers and broad questions of policy that are the Legislature’s to decide. Finally, it is not proper for a tax tribunal to take into consideration the potential loss in tax revenues presented by a taxpayer’s claim when adjudicating that claim.

However, we agree with the City that the Appendices in question introduce legislative facts, not adjudicative facts. The matters discussed in these Appendices do not directly concern the parties, but rather more generally discuss the impact of the *Newark Group* decision and its interpretation of Wis. Stat. § 70.11(21)(a). We find that Appendices 1, 2 and 3 thus are outside the scope of the Stipulation. Consequently, we deny GBP's motion to strike, but give no weight to the facts presented in Appendices 1, 2 and 3 in reaching our decision in this matter, except insofar as they relate to the legislative history of Wis. Stat. § 70.11(21)(a).

III. Applicable Law

A. Wis. Stat. § 70.11(21)(a) and Related Rules

In 2005, Wis. Stat. § 70.11(21)(a)³ provided an exemption from property tax for the following type of property:

(21) TREATMENT PLANT AND POLLUTION ABATEMENT EQUIPMENT. (a) All property purchased or constructed as a waste treatment facility used for the treatment of industrial wastes, as defined in s. 281.01(5), or air contaminants, as defined in s. 285.01(1), but not for other wastes, as defined in s. 281.01(7), for the purpose of abating or eliminating pollution of surface waters, the air, or waters of the state if that property is not used to grow agricultural products for sale and, if the property's owner is taxed under ch. 76, if the property is approved by the department of revenue. For the purposes of this subsection, "industrial waste" also includes wood chips, sawdust, and other wood residue from the paper and wood products manufacturing process that can be used as fuel and would otherwise be considered superfluous, discarded, or fugitive material. The department of natural resources and department of health and family services shall make recommendations upon

³ Section 70.11(21)(a) has since been amended, effective January 1, 2007. See 2007 Wis. Act 19.

request to the department of revenue regarding such property. All property purchased or upon which construction began prior to July 31, 1975, shall be subject to s. 70.11(21), 1973 stats.

Wis. Stat. § 281.01 provided the following relevant definitions:

(1) "Air contaminant" means dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

(5) "Industrial wastes" includes liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.

(7) "Other wastes" includes all other substances, except industrial wastes and sewage, which pollute any of the surface waters of the state. The term also includes unnecessary siltation resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.

The applicable administrative rules interpreting § 70.11(21)(a), Wis.

Admin. Code § Tax 12.40, provided as follows in relevant part:

§TAX 12.40 Waste treatment facilities--industrial.

(1) STATUTE. The general property tax exemption for a waste treatment facility is contained in s. 70.11(21), Stats.

(3) INDUSTRIAL WASTE TREATMENT FACILITY EXEMPTION. (a) The words "waste", "treatment" and "facility" are deemed to have the following meanings:

1. "Facility" means tangible property that is built, constructed or installed as a unit so as to be readily identifiable as directly performing a waste treatment function.

2. "Treatment" means removing, altering or storing waste.

3. “Waste” means that which is left over as superfluous, discarded or fugitive material. In addition, “industrial wastes” is defined by reference to s. 281.01(5), Stats., as including liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource. “Air contaminant” is defined by reference to s. 285.01(1), Stats., as dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

4. “Waste treatment facility” means tangible property that is built, constructed or installed as a unit so as to be readily identifiable as directly removing, altering or storing leftover, superfluous, discarded or fugitive material.

The legislature created Section 70.11(21)(a) in 1953 as an exemption from property tax for property purchased and constructed for the purpose of abating or eliminating air or water pollution. Until 2001, qualifying for this exemption required the approval of a particular state agency, most recently the Department. *See, e.g.*, Laws of 1953, Ch. 183, § 1; Laws of 1965, Ch. 614, § 28; Laws of 1967, Ch. 83, § 5; Laws of 1969, Ch. 206, § 1; Laws of 1975, Ch. 39, § 450; City Brief, App. 4-8. However, in 2001, the statute was amended to remove that requirement, except for taxpayers taxed under Chapter 76. 2001 Wis. Act 16, § 2104; City Brief, App. 9.

B. The Newark Group Decision

Since the 2001 amendment of Section 70.11(21)(a) removed the Department from its prior role as gatekeeper for this exemption, a number of taxpayers have questioned its limits. The *Newark Group* appeal was the first to reach the Commission with respect to this issue, and the Commission held that all of the property

at issue used in recycling and related manufacturing was exempt under Section 70.11(21)(a).

Newark Group involved facts that are very similar to the facts at issue in this case. In addition, like the property at issue in that case, GBP's Green Bay Mill is a paper recycling and manufacturing facility taxed under Wis. Stat. § 70.995, not Chapter 76, and thus is eligible for the exemption as claimed under Section 70.11(21)(a).

Newark Group concerned the exemption claim of The Newark Group, Inc. ("Newark"), a privately held corporation that produced 100% recycled paperboard. Newark had two divisions, Paperboard and Recycled Fibers. Recycled Fibers collected post-consumer paper products and delivered them to either Paperboard's plant in Milwaukee or Recycled Fibers' facility in Green Bay. Part of Recycled Fibers' operation consisted of placement of vertical balers in industrial or commercial businesses that produced post-consumer paper. Personnel provided by the business where the baler was located operated each baler. To operate the balers, these personnel basically loaded post-consumer paper into the machine and pressed a control button. A press compacted the paper, and when the baler was full, the bale was tied and unloaded. These bales were then collected by Recycled Fibers and sold to either Paperboard or other customers.

At the Green Bay facility, Recycled Fibers received post-consumer paper, some baled, some not. The baled paper was generally held until delivered to a customer. The non-baled paper was processed by hand to remove contaminants, sorted

into like grades, and fed into a baler. These bales were then sold to either Paperboard or other customers.

The Paperboard division operated a paper mill in Milwaukee. Post-consumer paper, primarily baled, was received at the mill. The paper was fed, along with water, into a pulper, and the pulp was then fed into one of two paper machines. These paper machines produced various grades of paperboard for sale to a wide range of customers for use in a wide range of products.

The Commission concluded that Newark's Paperboard division properties constituted a "waste treatment facility" under Section 70.11(21)(a), but that property used in Recycled Fibers' baling operations did not qualify for the exemption. The Dane County Circuit Court affirmed the Commission's decision entirely with respect to the claimed exemptions.⁴

C. The Department's Position

The Department notes that it "vigorously litigated" the *Newark Group* cases. (Dep't Brief at p. 6.) However, the Dane County Circuit Court ruled against the Department on the question of Newark's claimed exemption under Section 70.11(21)(a), and the Department did not appeal that issue to the Court of Appeals. By not appealing, the Department was deemed to acquiesce to the Circuit Court's holding in

⁴ The Circuit Court reversed the portion of the Commission's decision that awarded certain costs and attorneys' fees to Newark. No such claim is at issue in this case.

Newark Group pursuant to Wis. Stat. § 73.015(2).⁵ Applying the decision in *Newark Group*, the State Board of Assessors reduced the assessment of the Green Bay Mill to zero, as requested by GBP.

IV. Standard of Review of the Department's Action

The Department's assessment is presumed to be correct, and it is the petitioner's burden to demonstrate that the assessment is incorrect. See *Hormel Foods Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-741 at 32,962 (WTAC 2004), *aff'd*, Case No. 04-CV-1278 (Dane Co. Cir. Ct. 2004). If there is credible evidence that may in any reasonable view support the assessor's valuation, that valuation must be upheld. *Universal Foods Corp. v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-316 at 31,111 (WTAC 1997).

In this case, the Department's assessment of the Green Bay Mill is zero. The City challenges that assessment, but argues that GBP, the Intervenor, has the burden of proof in this matter under Wis. Stat. § 70.109.⁶ (City Brief at 26.)

The City's position is without merit. As support, the City cites a number of cases that pitted taxpayers seeking exemptions from municipalities directly against those municipalities (City Brief at 24-26), but that is not the situation in this case. The Department, not GBP, is the respondent in this matter, and its assessment is at issue. GBP is not "claiming" an exemption in this matter; the exemption has been granted by

⁵ "If the circuit court construes a statute adversely to the contention of the department of revenue, the department shall be deemed to acquiesce in the construction so adopted unless an appeal to the court of appeals is taken, and the construction so acquiesced in shall thereafter be followed by the department."

⁶ "Exemptions under this chapter shall be strictly construed in every instance with a presumption that the property in question is taxable, and the burden of proof is on the person who claims the exemption."

the State Board of Assessors.

GBP is not even a necessary party to this action. Had GBP not intervened, this case would have proceeded without GBP's participation, and, according to the City's argument, the Department then would have had the burden of proving the correctness of its own assessment, contrary to long-standing precedent and practice. As the party challenging the Department's assessment, the City has the burden of proof in this matter.

V. Rules of Statutory Construction

Statutes conferring tax exemptions are to be strictly construed. Wis. Stat. § 70.109; *Columbus Park Housing Corp. v. City of Kenosha*, 267 Wis. 2d 59, 671 N.W.2d 633 (2003). However, that construction must be reasonable. See *Columbia Hospital Assn. v. City of Milwaukee*, 35 Wis. 2d 660, 668, 151 N.W.2d 750, 754 (1967); *Friendship Village of Greater Milwaukee, Inc. v. City of Milwaukee*, 181 Wis. 2d 207, 219, 511 N.W.2d 345, 350 (Ct. App. 1993) (pet. den'd). An exemption statute need not be given the narrowest possible construction. *Id.* For example, in *Columbia Hospital* and *Friendship Village*, apparent ambiguities in the statute were resolved in favor of exemption.

Citing *Columbus Park*, the City goes so far as to suggest that the construction of a tax exemption statute need only be strict, and not necessarily reasonable. (City Brief at 24.) Since the alternative to strict but reasonable construction would apparently be strict and unreasonable construction, we decline to follow the

City's suggestion.⁷ In the belief that the Commission's basic function is to carry out the intent of the legislature as expressed in the statutes, we will continue to apply a strict but reasonable construction to tax exemption statutes. *See Columbus Park* (C.J. Abrahamson, dissenting).

The central goal of statutory interpretation is to discern legislative intent. *See Hemberger v. Bitzer*, 216 Wis. 2d 508, 517, 574 N.W.2d 656, 659 (1998). Statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." *State ex rel. Kalal v. Circuit Court*, 271 Wis. 2d 633, 663, 681 N.W.2d 110 (2004). "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *Id.* Context and structure are also important factors, and construction should strive to avoid absurd or unreasonable results. *Id.* When a statute is clear and unambiguous, the statute must be interpreted on the basis of its plain meaning. *Id.*; *Turner v. Gene Dencker Buick-Pontiac, Inc.*, 240 Wis. 2d 385, 393-394, 623 N.W.2d 151 (Ct. App. 2000).

A court will look beyond the apparent plain meaning of a statute and consult its legislative history to find legislative intent in order to: (1) confirm the statute's meaning; (2) clear up any ambiguity that remains after considering all intrinsic sources; or (3) verify that the legislature did not intend absurd, unreasonable or unthinkable results produced by the statute's plain meaning. *Teschendorf v. State Farm*

⁷ Indeed, events subsequent to *Columbus Park* highlight the importance of considering legislative intent even when strictly construing a tax exemption statute. Acting with unusual speed in 2004, the legislature amended Section 70.11 retroactively to January 1, 2002 to overturn the result in *Columbus Park*. See 2003 Wis. Act 95.

Ins. Cos., 293 Wis. 2d 123, 134-135, 717 N.W.2d 258 (2006). In this case, we consult the legislative history of Section 70.11(21)(a) to confirm the legislative intent behind the statute and the 2001 amendment.

A. Legislative History of the 2001 Amendment

The legislative history of the 2001 amendment to Section 70.11(21)(a)⁸ indicates that this amendment was intended to save time and money for the Department and its personnel, totaling approximately \$750 per year in printing and mailing costs for exemption applications and 300 employee hours per year spent processing these applications. *See* Wis. Dep't of Revenue, Div. of State and Local Finance, Manufacturing & Telco Assessment Bureau, *Title: Eliminate Waste Treatment Exemption Application* (July 8, 1999); City Brief, App. 10-12. As the City states, the 2001 amendment appears to have been intended as an innocuous technical amendment. The legislative history contains no indication that the legislature intended to broaden the exemption by enacting this amendment.

The City urges the Commission to focus on the legislative history of the amendment, and conclude that, because the legislature did not explicitly intend to expand the exemption, *Newark Group* was wrongly decided. However, the legislative history does not prove that the interpretation of the statute followed in *Newark Group* was incorrect. The amendment simply removed the Department's authority to act as gatekeeper for this exemption. It did not make any substantive changes to the language of the exemption itself, and *Newark Group* is not in conflict with any other existing

⁸ 2001 Wis. Act 16, § 2104.

precedent. The fact that the Commission interpreted the statute more broadly in *Newark Group* than the Department had previously interpreted it does not prove that the Commission's interpretation was incorrect. However, the legislature's recent amendment of Section 70.11(21)(a) to limit the reach of *Newark Group* in future cases does indicate that *Newark Group* may have been overbroad. See 2007 Wis. Act 19.

B. 2007 Amendment of Section 70.11(21)(a)

Effective January 1, 2007, the Legislature amended Section 70.11(21)(a), renumbered it as Section 70.11(21)(am) and created new Section 70.11(ab), which together now provide as follows:

70.11 (21) (ab) In this subsection:

1. "Air contaminants" has the meaning given in s. 285.01 (1).
2. "Industrial waste" means waste resulting from any process of industry, trade, or business, or the development of any natural resource, that has no monetary or market value, except as provided in subd. 3. b., and that would otherwise be considered superfluous, discarded, or fugitive material. "Industrial waste" does not include other wastes, as defined in s. 281.01 (7).
3. "Used exclusively" means to the exclusion of all other uses except any of the following:
 - a. For other use not exceeding 5 percent of total use.
 - b. To produce heat or steam for a manufacturing process, if the fuel consists of either 95 percent or more industrial waste that would otherwise be considered superfluous, discarded, or fugitive material or 50 percent or more of wood chips, sawdust, or other wood residue from the paper and wood products manufacturing process, if the wood chips, sawdust, or other wood residue would otherwise be considered superfluous, discarded, or fugitive material.

70.11(21)(am) All property purchased or constructed as a waste treatment facility used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants, for the purpose of abating or eliminating pollution of surface waters, the air, or waters of the state if that property is not used to grow agricultural products for sale and, if the property's owner is taxed under ch. 76, if the property is approved by the department of revenue. The department of natural resources and department of health and family services shall make recommendations upon request to the department of revenue regarding such property. All property purchased or upon which construction began prior to July 31, 1975, shall be subject to s. 70.11 (21), 1973 stats.

2007 Wis. Act 19, §§ 1-2.⁹

This amendment clearly tightens the requirements for this exemption by adding the requirement that property exempt under this section be used “exclusively and directly to remove, store, or cause a physical or chemical change” in industrial waste or air contaminants, as well as adding specific definitions of certain terms used in the statute. Wis. Stat. § 70.11(21)(ab)-(am) (2007). In addition, the amendment’s legislative history indicates that the legislature intended to limit the reach of *Newark Group*. See Report of the Joint Survey Committee on Tax Exemptions, 2007 S.B. 122 (May 30, 2007).

However, this amendment is also notable for what it does not do. First, it is effective for assessments made on or after January 1, 2007, and thus does not apply to this case, which involves an assessment for 2005. Second, the amendment does not return the Department to its former role as gatekeeper of this exemption for taxpayers

⁹ Enacted on August 8, 2007; published on August 22, 2007.

not taxed under Chapter 76. Instead, the legislature left intact the current procedure of appealing assessments by the State Board of Assessors disputed under Section 70.11(21)(a) to the Commission, the same agency that decided *Newark Group*. Finally, it does not explicitly reject the reasoning of *Newark Group*, even though the legislature was aware of *Newark Group* and its potential reach. In particular, the amendment does not attempt to restrict the definition of “abating or eliminating” pollution, as used in Section 70.11(21)(a), from including “preventing” pollution, which was one of the Commission’s central holdings in *Newark Group*.

C. Newark Group and Stare Decisis

Although consistency in administrative proceedings “is a virtue,” the doctrine of *stare decisis* is not binding on an administrative agency. *Nelson Bros. Furniture Corp. v. Wis. Dep’t of Revenue*, 152 Wis.2d 746, 756, 449 N.W.2d 328 (Ct. App. 1989) (citations omitted). The Commission is an administrative agency, not a court, but the policy considerations that form the basis of *stare decisis* are as important to the Commission’s role in adjudicating tax disputes as they are in a court of law. As stated by our Supreme Court, “respect for prior decisions is fundamental to the rule of law.” *Johnson Controls, Inc. v. Employers Ins. of Wausau*, 264 Wis.2d 60, 115, 665 N.W.2d 257 (2003). As summarized by the Court:

Fidelity to precedent ensures that existing law will not be abandoned lightly. When existing law “is open to revision in every case, ‘deciding cases becomes a mere exercise of judicial will, with arbitrary and unpredictable results.’” ... “A court's decision to depart from precedent is not to be made casually. It must be explained carefully and fully to

insure that the court is not acting in an arbitrary or capricious manner. A court should not depart from precedent without sufficient justification.” *State v. Stevens*, 181 Wis.2d 410, 442, 511 N.W.2d 591 (1994) (Abrahamson, J., concurring).

Johnson Controls, 264 Wis. 2d at 115-116.

Additional rationales for following precedent include: “(1) the desirability that the law furnish a clear guide for conduct of individuals, to enable them to plan their affairs with assurance against untoward surprise; (2) the importance of furthering fair and expeditious adjudication by eliminating the need to relitigate every relevant proposition in every case; and (3) the necessity of maintaining public faith in the judiciary as a source of impersonal and reasoned judgments.” *Id.* at 116. In particular, “[t]he decision to overturn a prior case must not be undertaken merely because the composition of the court has changed.” *Id.* at 116-117 (citations omitted). Arguments for rejecting precedent must be weighed against these factors.

Departing from precedent is justified in a number of circumstances, including where the following situations are present: (1) changes or developments in the law have undermined the rationale behind a decision; (2) there is a showing that the precedent has become detrimental to coherence and consistency in the law; (3) the prior decision is unsound in principle or unworkable in practice; or (4) reliance interests are implicated. *Id.* at 118-119 (citations omitted).

The City urges us to limit *Newark Group* to its facts and parties and not follow it in this case, and argues that the Commission has the authority to do so. The

City notes that the Commission is not bound by its prior decisions and has reversed course in the past after determining that a prior decision had been erroneous. City Brief at 21, citing *Treml v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-163 (WTAC Oct. 4, 1995). According to the City, the fact that *Newark Group* was affirmed by the Dane County Circuit Court also can be overcome, because circuit court decisions have no precedential value and may be cited only for the persuasiveness of their reasoning and logic. *Brandt v. LIRC*, 160 Wis. 2d 353, 365, 466 N.W.2d 673 (Ct. App. 1991). However, the Court of Appeals also has stated that the purpose of Wis. Stat. § 73.015(2) is served if the Department *and* the Commission are bound by an unappealed decision of the circuit court. *U.S. Shoe v. Wis. Dep't of Revenue*, 158 Wis. 2d 123, 136-137, 462 N.W.2d 233 (Ct. App. 1990).

Even if the Commission could choose not to follow *Newark Group*, the City must prove that this would be the correct course of action. Consequently, the City further argues on a number of bases that *Newark Group* is unsound in principle and was incorrectly decided. First, the City argues that the Department and the Commission mistakenly construed the post-2001 amendment version of Section 70.11(21)(a) in *Newark Group*, instead of the prior version that actually applied during the period at issue in that case. (City Brief at 22.) However, that alleged error is irrelevant in this case, which both parties agree involves the statute as amended in 2001. The City further criticizes the Commission's lack of analysis of the legislative history of the statute and the 2001 amendment, but our analysis of that legislative history as well as the 2007 amendment show no clear legislative intent that demands an outcome contrary to the

result in *Newark Group*. Finally, the City again invokes Wis. Stat. § 70.109 and the requirement of strict construction of a tax exemption statute. While we agree that Section 70.11(21)(a) must be strictly construed, the City has the burden of proof in this case.

1. “Abating or Eliminating” v. Preventing Pollution

The City argues at length that the phrase “abating or eliminating pollution,” as used in Section 70.11(21)(a), does not include preventing pollution. (City Brief at 39-45.) In *Newark Group*, the Commission and the Circuit Court both specifically rejected this contention, and determined that interpreting the statute in the manner now urged by the City would lead to absurd and unreasonable results. In particular, the City’s interpretation would deny exemption to facilities that prevent the creation or release of polluted air and water while granting exemption to facilities that produce polluted air or water and route it to a separate waste treatment facility, which would undoubtedly be an absurd result.

In its brief, GBP bolsters the *Newark Group* decision on this issue by citing several instances where the term or concept of preventing pollution appeared in the legislative history of Section 70.11(21)(a) and amendments thereto. (GBP Brief at 7-9.) In addition, GBP cites a 1971 Opinion of the Attorney General that concludes, “the prevention of water and air pollution” were purposes that Section 70.11(21)(a) “always was intended to incorporate” 60 Op. Atty. Gen. Wis. 154 (May 4, 1971); (GBP Brief at 9-11 and App. C). Finally, we note again that the legislature did not attempt to

overturn this portion of *Newark Group* in the 2007 amendment to Section 70.11(21)(a). We agree with GBP's analysis of this issue, as well as the analysis of the Commission and Circuit Court in *Newark Group*, and thus we reaffirm *Newark Group* on this point.

2. "For the Purpose of Abating or Eliminating" Pollution

In its main brief, the City also argues that, under Section 70.11(21)(a), the exempt property must be used "for the purpose of abating or eliminating" air or water pollution, and that the Green Bay Mill does not so qualify. (City Brief at 45-48.) As GBP points out in its brief (GBP Brief at 17-21), Section 70.11(21)(a) does not require that the property be used primarily for the exempt purpose; it requires only that the exempt purpose be one of the purposes for which the property is used. *Owens-Illinois v. Town of Bradley*, 132 Wis. 2d 310, 315-316, 392 N.W.2d 104 (Ct. App. 1986). In its reply brief, the City withdraws this argument, but reserves the right to raise it again in a higher court. (City Reply Brief at 18.) Consequently, on this issue, we note only that the facts show that one of the purposes of the Green Bay Mill is to prevent, abate or eliminate air and water pollution, and that the portions of the facility that qualify as waste treatment facilities under Section 70.11(21)(a) thus satisfy the "purpose" requirement of the statute, as interpreted in *Owens-Illinois*.

In sum, we find the City's broad critique of *Newark Group* to be unconvincing and unwarranted. Based on our review of the record in this case and applicable law, and taking into account the factors underlying the doctrine of *stare*

decisis, we reaffirm the central holdings of the Commission in *Newark Group*, subject to the limitations discussed below.

VI. Partial Exemption of the Green Bay Mill under Section 70.11(21)(a)

Having reaffirmed *Newark Group*, we nevertheless find it necessary to limit the scope of that decision in this and future cases. In *Newark Group*, neither party apparently argued that the combined recycling and manufacturing facility at issue could be partially exempt under Section 70.11(21)(a), because portions of the facility qualified for the exemption while others did not. In this case, both GBP and the City argue in the alternative that, if the Commission rejects their main contentions, the Green Bay Mill at least (or at most) qualifies for a partial exemption.

In *Owens-Illinois*, the Court of Appeals rejected a primary purpose test for a waste treatment facility that was integrated with a manufacturing facility, but considered only the waste treatment facility itself for exemption under Section 70.11(21)(a), not the larger manufacturing facility. *Owens-Illinois*, 132 Wis. 2d at 315-316 (paper mill's boiler and power house that burned refuse produced by the mill and produced steam and heat for the facility were exempt); *see also Consolidated Papers, Inc. v. Wis. Dep't of Revenue*, Wis. Tax Rptr (CCH) ¶ 400-250 (WTAC 1996) (washer/filter facility that removed certain waste from raw material at a paper mill was exempt). In addition, the legislative history of the 2007 amendment to Section 70.11(21)(a) indicates that the scope of the decision in *Newark Group* was overbroad. Consequently, we find that a theory of partial exemption under Section 70.11(21)(a) has been applied in the past and is consistent with the plain meaning and legislative intent of the statute, and

we hold that waste treatment facilities located on the premises of a manufacturing facility may be exempt under Section 70.11(21)(a). Furthermore, we find that portions of the Green Bay Mill qualify for exemption as waste treatment facilities under Section 70.11(21)(a), while other portions do not so qualify, as set forth below.

A. Areas A, B and E

In its briefs, the City agrees in the alternative that, if the Commission determines that the Green Bay Mill is partially exempt under Section 70.11(21)(a) and *Newark Group*, then Areas A, B and E of the facility would qualify for that partial exemption. (City Brief at 49; City Reply Brief at 19-20; *see also* GBP Brief at 21-22.) In accordance with our finding that qualifying portions of the Green Bay Mill are exempt under Section 70.11(21)(a) and *Newark Group*, we thus find that Areas A, B and E are exempt under Section 70.11(21)(a) without further discussion of the facts concerning those areas.

B. Area C, Main Office, Shipping Building and Parking Areas

Based on the stipulated facts, no part of Area C, the Main Office, the Shipping Building and the parking areas at the Green Bay Mill contains a waste treatment facility, or a portion thereof. Instead, these parts of the Green Bay Mill function as support areas for the waste treatment, manufacturing and other facilities at the Mill, and thus do not qualify for exemption under Section 70.11(21)(a).

C. Area D and Closed-Loop Process Water Storage Facilities

Applying a partial exemption to the Green Bay Mill, the only area of real disagreement between the City and GBP is the qualification of Area D for that

exemption. With respect to Area D, the exemption in question mainly concerns the land and buildings in that portion of the Green Bay Mill, because most of the machinery and equipment located there is exempt as manufacturing property under Wis. Stat. §§ 70.11(27)(b) and 70.995(2)(y).

Area D is the main paper manufacturing area of the Green Bay Mill, and includes the papermachine, the reel, and the winder. (Stip. ¶ 33.) The papermachine takes the fiber slurry and forms it into a useable paper sheet. *Id.* The vast majority of the Green Bay Mill's process water is recycled during the operation of the papermachine. *Id.* The only process water that is not recycled back to the closed-loop process water system is the water that evaporates in the dryer section. *Id.*

In September 1992, the Green Bay Mill became one of the first mills in the world to have a closed-loop process water system. (Stip. ¶ 50.) This system eliminates any direct discharges of wastewater from the papermaking process into the Fox River. *Id.* GBP has received a number of awards for its efforts to improve water quality. (Stip. ¶ 54.)

This closed-loop process water recycling system recovers process waters through various stages of operations at the Green Bay Mill. (Stip. ¶ 40.) The vast majority of process water recovery occurs in Area D, as the fiber slurry is reduced from 99% water content down to 7% water content. *Id.* Fourteen million gallons of process water per day are captured by the closed loop system and recycled for re-use at the Green Bay Mill, rather than discharged into the Fox River. *Id.* Process water is not discharged from the mill, there is no connection to a municipal water treatment plant,

and there is no onsite water treatment facility. (Stip. ¶ 45C.)

The Green Bay Mill has water storage throughout the mill and in an area to the west of the Green Bay Mill buildings, which houses up to one million gallons of recycled process water necessary to take the fiber slurry down to the proper consistency. (Stip. ¶ 44.) This recycled process water storage makes the Green Bay Mill's closed-loop process water system possible. *Id.*

In Area D, GBP also recycles some of the wastepaper produced in the Green Bay Mill's manufacturing process. In the winder in Area D, the (large) parent reel of recycled containerboard is cut into smaller desired roll sizes. (Stip. ¶ 38.) The edge trim from the winder is sent down to the repulper in the basement below the winder via trim chutes. *Id.* The trim is then added to recycled process water and turned into pulp slurry and used as a source of recycled fiber for the mill. (*Id.*; Stip. ¶ 13.)

For purposes of Section 70.11(21)(a), "treatment" means "removing, altering or storing waste." Wis. Admin. Code § Tax 12.40(3)(a)2. Similarly, "waste treatment facility" means "tangible property that is built, constructed or installed as a unit so as to be readily identifiable as directly removing, altering or storing leftover, superfluous, discarded or fugitive material. Wis. Admin. Code § Tax 12.40(3)(a)4. As discussed above and in more detail in *Newark Group*, "abating or eliminating" water pollution under Section 70.11(21)(a) includes preventing water pollution. Thus, a facility that prevents water pollution by storing leftover contaminated water qualifies as a "waste treatment facility" under the statute.

According to these definitions, the Green Bay Mill's closed-loop process water recycling system qualifies as a waste treatment facility under Section 70.11(21)(a). This system prevents water pollution by storing leftover contaminated water onsite, and then reusing the same water in the manufacturing process. This system is based in Area D, where "the vast majority of process water recovery occurs." (Stip. ¶ 40.) In addition, Area D contains a facility for recycling wastepaper created during the manufacturing process. (Stip. ¶ 38.) Consequently, we find that Area D and all closed-loop process water recycling system storage facilities at the Green Bay Mill are exempt under Wis. Stat. § 70.11(21)(a), as interpreted in *Newark Group* and prior cases.

Conclusion

For the reasons discussed herein, we reaffirm the central holdings of the Commission in *Newark Group*, but limit that decision to allow the exemption under Wis. Stat. § 70.11(21)(a) of a waste treatment facility that is located on property that is also used for other types of purposes or facilities. Applying this interpretation of Wis. Stat. § 70.11(21)(a), Areas A, B, D, E and all closed-loop process water recycling system storage facilities at the Green Bay Mill are exempt under Wis. Stat. § 70.11(21)(a), but the remaining portions of the property are not exempt under that statute.

IT IS ORDERED

1. GBP's Motion to Strike is denied.
2. The State Board of Assessors' determination in GBP's appeal of the assessment of GBP's Green Bay Mill is affirmed in part and reversed in part, consistent with the Commission's findings set forth in Part VI hereof.

Dated at Madison, Wisconsin, this 21st day of December, 2007.

WISCONSIN TAX APPEALS COMMISSION

Diane E. Norman, Acting Chairperson

David C. Swanson, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"