

ILLINOIS POLLUTION CONTROL BOARD

May 16, 2002

DAIRY KING FARMS, INC. (Property)
Control Number 01-000-336-00),)
)
Petitioner,)
)
v.) PCB 02-191
) (Tax Certification)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On May 1, 2002, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of Dairy King Farms, Inc. (Dairy King) as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2000)). The Agency filed the recommendation under Part 125 of the Board’s procedural rules (35 Ill. Adm. Code 125). In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Dairy King’s facilities are pollution control facilities.

LEGAL FRAMEWORK

Under the Property Tax Code, “[i]t is the policy of this State that pollution control facilities should be valued, at 33 1/3% of the fair cash value of their economic productivity to their owners.” 35 ILCS 200/11-5 (2000); *see also* 35 Ill. Adm. Code 125.200(a)(2). “For tax purposes, pollution control facilities shall be certified as such by the Pollution Control Board and shall be assessed by the Department [of Revenue].” 35 ILCS 200/11-20 (2000); *see also* 35 Ill. Adm. Code 125.200(a).

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

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Dairy King on December 26, 2001. Agency Recommendation (Agency Rec.) at 1. On May 1, 2002, the Agency filed a recommendation on the application with the Board. The Agency's recommendation identifies the facilities at issue:

Two concrete main waste alleys (each 14 ft. x 248 ft.);

Two concrete outside waste alleys (each 10 ft. x 248 ft.);

Two cable scraper systems (each with one 14 ft. scraper and one 10 ft. scraper powered by a 1 H.P. electric motor);

One PVC flume (2 ft. in diameter x 98 ft.);

One concrete reception pit (12 ft. x 14 ft. x 10 ft.);

One manure storage tank with concrete floor and glass lined steel sides (112 ft. in diameter x 14 ft.);

210 H.P. electric motors; and

One 145 PTO driven pump. Agency Rec. at 1.

The Agency's recommendation also identifies the location of the facilities: the NE 1/4 of Section 3, Township 10N, Range 1W of the 3rd Prime Meridian, 27245 N. 23rd Avenue, Rosamond, Montgomery County. Agency Rec. at 1.

The Agency recommends that the Board certify that the identified facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2000)) because the primary purpose of the facilities is the elimination, prevention, or reduction of water pollution. Agency Rec. at 2.

TAX CERTIFICATE

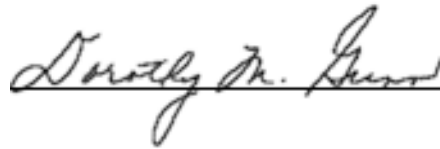
The Board finds and certifies that Dairy King's facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2000)). Under Section 11-25 of the Property Tax Code, the effective date of this certificate is "the date of application for the certificate or the date of the construction of the facility, which ever is later." 35 ILCS 200/11-25 (2000); *see also* 35 Ill. Adm. Code 125.216(a). Section 125.216(d) of the Board's procedural rules states that the Clerk "will provide the applicant and the Agency with a copy of the Board's order setting forth *the Board's findings and certificate, if any.*" 35 Ill. Adm. Code 125.216(d) (quoting in italics 35 ILCS 200/11-30 (2000)). The

Clerk therefore will provide Dairy King, the Agency, and the Department of Revenue with a copy of this order.

IT IS SO ORDERED.

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

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 16, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board