

ILLINOIS POLLUTION CONTROL BOARD
September 19, 2019

S&S FARMS, LLC (Property Identification)	
Number 04-30-200-008,)	
04-30-200-009, 04-20-300-004, and)	
04-19-400-01),)	
)	
Petitioner,)	PCB 20-11
)	(Tax Certification - Water)
v.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A. Palivos):

On August 29, 2019, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of S&S Farms, LLC (“S&S”) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2018); 35 Ill. Adm. Code 125. S&S’s livestock waste handling facilities are located at 787 State Route 64 in Malta, DeKalb County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that S&S’s identified livestock waste handling 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 (2018); *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 (2018); *see also* 35 Ill. Adm. Code 125.200(a). Under the statute, the Board determines if the facilities are pollution control facilities; however, the Board is not authorized to assess a value of those facilities.

Under Section 125.202 of the Board’s procedural rules, a person may submit an application for tax certification to the Agency. *See* 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. *See* 35 Ill. Adm. Code 125.204(a). Among other things, the Agency’s filing must recommend that the Board issue or deny tax certification. *See* 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 (2018); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from S&S on January 22, 2019.¹ Rec. at 1. On August 29, 2019, the Agency filed a recommendation with the Board, attaching S&S's application. The Agency's recommendation identifies the facilities at issue:

Livestock waste handling facilities consisting of multiple concrete manure pits, the salted portion of the floor over the manure pits that capture and contain waste generated in the barn above, a clay-lined earthen lagoon that stores the manure transferred from the manure pits, approximately 10,830 total feet of 6-inch PVC pipes that transfer manure from the manure pits to the lagoon, the concrete floor of a truck wash building that collects wastewater from the truck wash, a concrete storage tank that stores wastewater from the truck wash building, and a PVC drain pipe that transfers wastewater from the truck wash building to the concrete storage tank. *Id.* at 1-2.

The Agency further describes the facilities as “used to collect, transport, and/or store livestock waste prior to cropland application, and are further described in Exhibit A.” *Id.* at 3.

The Agency recommends that the Board certify that the livestock waste handling facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2018)) with the “primary purpose “of eliminating, preventing, or reducing water pollution.” Rec. at 4; *see also* Rec., Agency Technical Memorandum at 2.

TAX CERTIFICATE

Based upon the Agency's recommendation, S&S's application, and the Board's technical review, the Board finds and certifies that S&S's livestock waste handling facilities are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2018)). The Board makes no finding regarding the assessed value of those facilities. 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, whichever is later.” 35 ILCS 200/11-25 (2018); *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 (2018)). The Clerk therefore will provide S&S and the Agency with a copy of this order.

IT IS SO ORDERED.

Section 11-60 of the Property Tax Code provides that any applicant or holder aggrieved by the issuance, refusal to issue, denial, revocation, modification or restriction of a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate may appeal the Board's finding and order to the Circuit Court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (2018)). *See* 35 ILCS 200/11-60 (2018). Filing a motion asking that the Board

¹ The Agency's recommendation is cited as “Rec. at _.”

reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court	
Parties	Board
Charles Schelkopf 2435 Bethany Road Sycamore, Illinois 60178	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
Illinois Environmental Protection Agency Michael S. Roubitchek 1021 North Grand Avenue East Post Office Box 19276 Springfield, Illinois 62794-9276	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 19, 2019, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board