

ILLINOIS POLLUTION CONTROL BOARD
December 5, 2019

FORMAN CREEK FARM – ONEIDA)	
(Property Identification Number 06-12-200-)	
001),)	
)	
Petitioner,)	
)	
v.)	PCB 20-21
)	(Tax Certification – Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (A. Palivos):

On October 15, 2019, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of Forman Creek Farm (Forman Creek) 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. The Agency also recommends that the Board deny certification of other Forman Creek facilities as pollution control facilities. Forman Creek’s beef cattle facility is located at 2256 Knox Road 1150 E in Oneida, Knox County.

On November 7, 2019, the Board entered an order notifying Forman Creek that it had 35 days from service of the Agency’s recommendation to contest the recommended denial. *See* 35 Ill. Adm. Code 125.206(a), 125.216(c). Forman Creek did not timely file a petition to contest the Agency’s recommended denial.

In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, certifies facilities as recommended by the Agency and the Board’s technical review, and denies certification of other facilities as recommended by the Agency and the Board’s technical review.

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 Forman Creek on July 23, 2018.¹ Rec. at 1. On October 15, 2019, the Agency filed its recommendation that the Board certify the following facilities as pollution control facilities:

One (1) concrete manure pit approximately 72 ft. (length) x 46 ft. (width) x 10 ft. (depth) with 2 concrete pump out pits approximately (6 ft. x 6 ft. x 11 ft. deep), the portion of concrete slatted flooring over this manure pit with its supporting concrete columns and precast beams and the length of Form-a-Drain around this manure pit; and

One (1) concrete manure scrape alley approximately 110 ft. (length) x 8 ft. (width) that conveys liquid livestock waste to the manure pit. *Id.*

The Agency describes these facilities as being “used to collect, transport, and/or store livestock waste prior to cropland application.” *Id.* at 2. The Agency recommends that the Board certify these as 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.” *Id.*

The Agency also recommends that the Board deny certification for these facilities:

The wood framed walls and roof structure of the bedded pack area and the deep pit area and the concrete bed-pack divider walls and roof support walls;

the concrete feed-bunks and transfer alley and solid concrete flooring, not including the approximately 8 ft. x 110 ft. scrape alley, within the bedded pack area; and

the concrete floors and walls and the wood framed walls and roof structure of the commodity/feed storage building. Rec. at 3.

According to the Agency, the primary purpose of these items recommended for denial is “not pollution control” but rather “to provide an area for feeding animals, keeping animals clean, sheltering animals from outside weather conditions, [and] reduc[ing] bedding needs.” Rec. at 4, citing *Beef Housing & Equipment Handbook*, 3rd ed., Midwest Plan Service (Apr. 1979).

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

TAX CERTIFICATE

Based upon the Agency’s recommendation, Forman Creek’s application, and the Board’s technical review, the Board finds and certifies that Forman Creek’s facilities recommended by the Agency for certification and identified in this order 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, which ever is later.” 35 ILCS 200/11-25 (2016); *see also* 35 Ill. Adm. Code 125.216(a).

The Board did not receive a timely petition to contest the Agency’s recommended denial of certification for other Forman Creek facilities identified in this order. Based upon the Agency’s recommendation, Forman Creek’s application, and the Board’s technical review, the Board denies certification of those facilities as pollution control facilities.

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 Forman Creek 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 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
Forman Creek Farm 2256 Knox road 1150 E Oneida, IL 61467	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 Attn: Jacob H. Smith 1021 North Grand Avenue East P.O. Box 19276 Springfield, IL 62794-9276 Jacob.H.Smith@illinois.gov	

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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 5, 2019, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board