

ILLINOIS POLLUTION CONTROL BOARD  
March 18, 2021

OLIVE BRANCH ACRES, LLC (Property )  
Identification Number 03-32-400-006 )  
 )  
Petitioner, )  
 )  
v. ) PCB 21-64  
 ) (Tax Certification - Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by B.F. Currie):

On February 26, 2021, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify specified facilities of Olive Branch Acres, LLC (petitioner) 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. Petitioner’s livestock waste management facilities are located at 13578 Hodges Lane, Rushville, in Schuyler County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that petitioner’s identified livestock waste 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 petitioner on June 4, 2020.<sup>1</sup> Rec. at 1. On February 26, 2021, the Agency filed a recommendation with the Board, attaching petitioner's application (Exh. A). The Agency's recommendation identifies the facilities at issue:

Within the farrowing barn, eighty-four (84) concrete livestock waste pits measuring 82.5 ft. (length) x 6.7 ft. (width) x 2 ft. (depth); nine (9) concrete waste pits measuring 82.5 ft. (length) x 9.1 ft. (width) x 2 ft. (depth); and the 180 slatted flooring units covering the waste pits.

One (1) concrete livestock waste pit, within the gestation barn no. 1 measuring 322 ft. (length) x 158 ft. (width) x 10 ft. (depth), the six (6) attached pump out pits (each approximately 4 ft. x 4 ft. x 10 ft. deep), and the 1,272 slatted flooring units used to cover the waste pits.

One (1) concrete livestock waste pit, within the gestation barn no. 2 measuring 322 ft. (length) x 158 ft. (width) x 10 ft. (depth), the six (6) attached pump out pits (each approximately 4 ft. x 4 ft. x 10 ft. deep), and the 1,272 slatted flooring units used to cover the waste pits.

One (1) concrete livestock waste pit, within the gilt developer barn, measuring 274 ft. (length) x 101 ft. (width) x 10 ft. (depth), the seven (7) attached pump out pits (each approximately 6 ft. x 6 ft. x 10 ft. deep), and the 691 slatted flooring units used to cover the waste pits. *Id.* at 1-2.

The Agency further describes: “[t]hese livestock waste management facilities are used to collect, transport, and/or store livestock waste prior to cropland application,” *Id.* at 2.

The Agency recommends that the Board certify that the livestock waste management 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 3.

### TAX CERTIFICATE

Based upon the Agency's recommendation, petitioner's application, and the Board's technical review, the Board finds and certifies that petitioner's livestock waste management facilities 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 [that facility/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). 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*

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<sup>1</sup> The Agency's recommendation is cited as “Rec. at \_.”

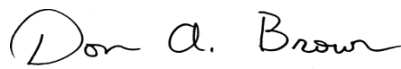
*certificate, if any.*” 35 Ill. Adm. Code 125.216(d) (quoting in italics 35 ILCS 200/11-30 (2018)). The Clerk therefore will provide petitioner and the Agency with a copy of this order.

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.

<b>Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court</b>	
<b>Parties</b>	<b>Board</b>
Olive Branch Acres, LLC 13578 Hodges Lane Rushville, IL 62681	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
Gabriel H. Neibergall, Division of Legal Counsel Illinois Environmental Protection Agency 1021 N. Grand Ave. East P.O. Box 19276 Springfield, IL 62794-9276 <a href="mailto:Gabriel.Neibergall@illinois">Gabriel.Neibergall@illinois</a>	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 18, 2021, by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board