

ILLINOIS POLLUTION CONTROL BOARD
April 15, 2021

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| ETHAN HOFFMAN NURSERY – |) | |
| KIRKLAND (Property Identification Number |) | |
| 05-07-400-004), |) | |
| |) | |
| Petitioner, |) | |
| |) | PCB 21-86 |
| v. |) | (Tax Certification - Water) |
| |) | |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (A. Palivos):

On March 31, 2021, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify specified facilities of Ethan Hoffman Nursery – Kirkland (Ethan Hoffman Nursery) 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. Ethan Hoffman Nursery’s livestock waste management facility is located at 6648 Aldrich Rd. in Kirkland, Dekalb County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Ethan Hoffman Nursery’s identified livestock waste management 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 Ethan Hoffman Nursery on December 22, 2020.¹ Rec. at 1. On March 31, 2021, the Agency filed a recommendation with the Board, attaching Ethan Hoffman Nursery's application (Rec. Exh. A). The Agency's recommendation identifies the facilities at issue:

Livestock waste handling facilities consisting of one concrete manure pit (approximately 55 ft. x 208 ft. x 8 ft.) and the concrete slatted portion of the floor over the manure pit that capture and contain waste generated in the barn above, five pumpout pits (approximately 6 ft. x 8 ft. x 8 ft. each) to allow manure removal from the manure pit, plastic perimeter drainage pipes (approximately 525 ft. x 6 in. x 2 in. total Form-a-Drain) located around the footing of the manure pit to prevent flotation of the pit, a plastic inspection/sampling port (approximately 12 ft. x 6 in.) located on the perimeter drainage pipe, and a plastic drain tile (approximately 240 ft. x 6 in. total) that removes water collected by perimeter drainage tile away from the manure pit. *Id.* at 1–2.

The Agency further describes the facilities as 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 2–3.

TAX CERTIFICATE

Based upon the Agency's recommendation, Ethan Hoffman Nursery's application, and the Board's technical review, the Board finds and certifies that Ethan Hoffman Nursery'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 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 certificate, if any.*” 35 Ill. Adm. Code 125.216(d) (quoting in italics 35 ILCS 200/11-30 (2018)). The Clerk therefore will provide Ethan Hoffman Nursery 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

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

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 | |
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| Parties | Board |
| Ethan Hoffman Nursery Attn: Ethan Hoffman 6648 Aldrich Rd. Kirkland, IL 60146 ehoff2001@gmail.com | 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: Grace McCarten 1021 North Grand Ave. E P.O. Box 19276 Springfield, IL 62794-9276 | |

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 15, 2021, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board