

ILLINOIS POLLUTION CONTROL BOARD

January 4, 2024

E&E ARNDT FARMS (Property Identification)	)	
Number 07-14-200-006),	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 24-44
	)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by M. Gibson):

On December 20, 2023, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify specified facilities of E&E Arndt Farms (Arndt Farms) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. See 35 ILCS 200/11-5 et seq. (2022); 35 Ill. Adm. Code 125. Arndt Farms’ swine finishing facility is located at 21508 Schafer Road in Malta, DeKalb County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Arndt Farms’ 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 (2022); 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 (2022); 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 (2022); see also 35 Ill. Adm. Code 125.216(a).

### AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Arndt Farms on January 3, 2023.<sup>1</sup> Rec. at 1. On December 20, 2023, the Agency filed a recommendation with the Board, attaching Arndt Farms' application (Rec. Exh. A). The Agency's recommendation identifies the facilities at issue:

Installation in 1969 - One (1) concrete swine nursery manure pit measuring approximately 26 ft. (width) x 125 ft. (length) x 2 ft. (depth) and slatted plastic flooring over the manure pit areas.

Installation in 1979 - One (1) concrete swine nursery manure pit measuring approximately 42 ft. (width) x 62 ft. (length) x 2 ft. (depth) and slatted plastic flooring over the manure pit areas.

Installation in 1987 - One (1) concrete swine nursery manure pit measuring approximately 26 ft. (width) x 40 ft. (length) x 2 ft. (depth) and slatted plastic flooring over the manure pit areas.

Installation in 1987 - One (1) concrete swine nursery manure pit measuring approximately 20 ft. (width) x 35 ft. (length) x 2 ft. (depth) and the slatted concrete flooring over this pit.

Installation in 1973 - One (1) concrete swine finishing barn manure pit measuring approximately 28 ft. (width) x 100 ft. (length) x 8 ft. (depth) and the 12 ft. wide portion of slatted concrete flooring over this pit.

Installation in 2006 - One (1) concrete swine manure pit measuring approximately 82 ft. (width) x 110 ft. (length) x 8 ft. (depth) and the portion of flooring over this pit that consists of concrete slatted flooring.

Installation in 1991 - One (1) concrete swine manure pit measuring approximately 41 ft. (width) x 88 ft. (length) x 8 ft. (depth) and the portion of flooring over this pit that consists of concrete slatted flooring.

Installation in 1995 - One (1) concrete swine manure pit measuring approximately 41 ft. (width) x 192 ft. (length) x 8 ft. (depth) and the portion of flooring over this pit that consists of concrete slatted flooring.

Installation in 2008 - One (1) concrete swine manure pit measuring approximately 41 ft. (width) x 432 ft. (length) x 8 ft. (depth) and the portion of flooring over this pit that consists of concrete slatted flooring. *Id.* at 1-2.

The Agency further describes the facilities as being "used to collect, transport, and/or store livestock waste prior to cropland application." *Id.* at 2.

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

The Agency recommends that the Board certify that the identified livestock waste management facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2022)) with the “primary purpose of eliminating, preventing, or reducing water pollution.” 35 ILCS 200/11-10 (2022).” Rec. at 3; *see also* Rec. Exh. A (Agency technical memoranda).

### **TAX CERTIFICATE**

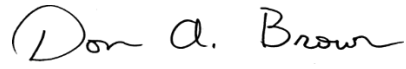
Based upon the Agency’s recommendation, Arndt Farms’ application, and the Board’s technical review, the Board finds and certifies that Arndt Farms’ identified livestock waste management facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2022)). 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 (2022); *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) (citing 35 ILCS 200/11-30 (2022)). The Clerk therefore will provide Arndt Farms 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.* (2022)). *See* 35 ILCS 200/11-60 (2022). Within 35 days after receiving this final Board order, a party to this Board proceeding may file a motion asking the Board to reconsider or modify the order. 35 Ill. Adm. Code 101.520. Filing a motion to reconsider this final Board 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>
E&E Arndt Farms Attn.: Ed & Darla Arndt 21988 Schafer Road Malta, Illinois 60150 earndtjr@aol.com	Illinois Pollution Control Board Attn.: Don A. Brown, Clerk 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 don.brown@illinois.gov
Illinois Environmental Protection Agency Attn.: Gabriel Neibergall, Assistant Counsel 1021 North Grand Avenue East PO 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 January 4, 2024, by a vote of 4-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Clerk  
Illinois Pollution Control Board