

ILLINOIS POLLUTION CONTROL BOARD
February 20, 2003

APEX PORK (Property Identification Number)
01-18-300-005),)
)
Petitioner,)
)
v.) PCB 03-123
) (Tax Certification)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

On February 14, 2003, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of Apex Pork as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2002)). The Agency filed the recommendation under Part 125 of the Board’s procedural rules (35 Ill. Adm. Code 125). In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Apex Pork’s 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 (2002); *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 (2002); *see also* 35 Ill. Adm. Code 125.200(a).

Under Section 125.202 of the Board’s procedural rules, a person may submit an application for tax certification to the Agency. 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. 35 Ill. Adm. Code 125.204(a). Among other things, the Agency’s filing must recommend that the Board issue or deny tax certification. 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 (2002); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Apex Pork on December 28, 2001. Agency Recommendation (Agency Rec.). On February 14, 2003, the Agency filed a recommendation on the application with the Board. The Agency's recommendation identifies the facilities at issue: livestock waste management facilities. Agency Rec. The Agency's recommendation further describes the facilities:

[O]ne concrete manure pit (21 ft. x 25 ft. x 2 ft. deep) with 2 manure drain pull plugs and the slotted concrete portion of the floor over the manure pit located in one swine isolation building;

one concrete manure pit (21 ft. x 53 ft. x 2 ft. deep) with 2 manure drain pull plugs and the slotted concrete portion of the floor over the manure pit located in each of 2 swine isolation buildings;

one concrete manure pit (21 ft. x 141 ft. x 2 ft. deep) with 2 manure drain pull plugs and the slotted concrete portion of the floor over the manure pit in 1 swine isolation building;

four concrete manure pits (each 6.92 ft. x 59.83 ft. x 2 ft. deep) with 1 manure drain pull plug per pit and the slotted woven wire portion of the floor over the manure pits in 1 swine farrowing building;

eight concrete manure pits (each 9.71 ft. x 59.83 ft. x 2 ft. deep) with 1 manure drain pull plug per pit and the slotted tri-bar steel portion of the floor over the manure pits in 1 swine nursery building;

three concrete manure pits (each 7.5 ft. x 380.33 ft. x 2 ft. deep) with 3[]manure drain pull plugs per pit and the slotted concrete portion of the floor over the manure pits in 1 swine gestation building;

approximately 1,400 feet of 8 inch diameter PVC manure transfer pipe. *Id.*

The Agency's recommendation also identifies the location of the facilities: Section 18, T13N, Range 1E of the 4th Principal Meridian, Knox County. Agency Rec.

The Agency recommends that the Board certify that the identified facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2002)) because the primary purpose of the facilities is eliminating, preventing, or reducing water pollution. Agency Rec.

TAX CERTIFICATE

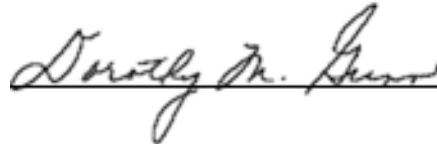
The Board finds and certifies that Apex Pork's facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2002)). Under

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 (2002); *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 (2002)). The Clerk therefore will provide Apex Pork and the Agency with a copy of this order.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board’s procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 20, 2003, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board