

ILLINOIS POLLUTION CONTROL BOARD  
March 20, 2003

UAP RICHTER COMPANY (Property )  
Identification Number 08-000-071-00) )  
(McDonough County), )  
)  
Petitioner, )  
)  
v. ) PCB 02-184  
) (Tax Certification)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

GREGORY ROOSEVELT, ESQ. APPEARED ON BEHALF OF THE PETITIONER; and

LISA MORENO OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
APPEARED ON BEHALF OF THE RESPONDENT.

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

On June 3, 2002, UAP Richter Company (Richter) filed a petition to review an April 22, 2002 tax certification recommendation of the Illinois Environmental Protection Agency (Agency). 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 considers Richter's petition for review.

Based on the record before it, the Board agrees with the Agency's decision to deny the tax certification. The Board finds that Richter has not proved that the contested portion of Richter's building is a "pollution control facility" as defined in the Property Tax Code. 35 ILCS 200/11-10 (2002).

**PROCEDURAL MATTERS**

On June 3, 2002, Richter filed a petition to review the Agency's April 22, 2002 partial denial of Richter's tax certification application. On June 6, 2002, the Board accepted this matter for hearing. The Agency filed the administrative record of the tax certification application on July 29, 2002.

A hearing was held before Board Hearing Officer Steve Langhoff on September 24, 2002. Two witnesses appeared on behalf of Richter. Richter offered one exhibit at hearing; the exhibit was accepted. The Agency did not call any witnesses or offer any exhibits.

Richter filed its post-hearing brief on November 8, 2002. The Agency filed a response brief on December 11, 2002. On January 10, 2003, Richter filed a reply brief.

### **STANDARD OF REVIEW**

The Board's authority in this matter arises from the Property Tax Code, under which the Board has sole authority to certify pollution control facilities for property tax purposes. The Board's review here therefore is *de novo*. Accordingly, the Board will consider the Agency's record of Richter's tax certification application as well as the evidence presented at the September 24, 2002 hearing. See Reed-Custer Community Unit School District No. 255-U v. Commonwealth Edison Co. and the IEPA, PCB 87-209 (Aug. 30, 1990). (Board considered tax certification application and evidence introduced at hearing in arriving at its determination), *aff'd sub nom. Reed-Custer Community Unit School District No. 255-U v. PCB, Commonwealth Edison Co., and the IEPA*, 232 Ill. App.3d 571, 597 N.E.2d 802 (1st Dist. 1992).

### **APPLICABLE STATUTORY PROVISIONS**

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).

Persons who obtain a tax certification receive preferential property tax treatment for certain facilities. Specifically, under the Property Tax Code, “pollution control facilities” are valued at 33 1/3% of the fair cash value of their economic productivity to their owners. *See* 35 ILCS 200/11-5 (1998). The Agency's final decision may be appealed to the Board. *See CGE Ford Heights, L.L.C. v. IEPA*, PCB 96-164 (Feb. 1, 1996), slip op. at 1.

The Property Tax Code defines “pollution control facilities” in pertinent part as follows:

Any system, method, construction, device or appliance appurtenant thereto, or any portion of any building or equipment, that is designed, constructed,

installed or operated for the primary purpose of:

- a) eliminating, preventing, or reducing air or water pollution, as the terms “air” and “water pollution” are defined in the Environmental Protection Act . . . 35 ILCS 200/11-10 (2002).

The Environmental Protection Act (Act), 415 ILCS 5/1 *et seq.*, defines “water pollution” as follows:

Such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. 415 ILCS 5/3.55 (2002).

As used in the definition of “water pollution,” the Act also defines “contaminant” and “waters” as follows:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State. 415 ILCS 5/3.06, 3.56 (2002).

### **AGENCY RECOMMENDATION**

The Agency states that it received a tax certification application from Richter on April 9, 2002. Ag. Rec. at 1. On April 22, 2002, the Agency filed a recommendation on the application with the Board. The Agency’s recommendation identifies the proposed water pollution control facilities at issue consist of the following agrichemical containment structures:

Two liquid agrichemical operational area containment structures;

Two bulk liquid agrichemical secondary containment structures;

One minibulk/package agrichemical secondary containment structure;

The portion of the building over the minibulk/package agrichemical secondary containment structure (L-shaped with greatest dimensions of 60 feet x 78 feet);

The portion of the building over one liquid agrichemical operational area containment structure; and

One bulk liquid agrichemical secondary containment structure and associated collection and recovery systems as approved under the Agency endorsed Agrichemical Facility Permit No. 91120912 (Log No. 97014600). Ag. Rec. at 1-2.

The Agency's recommendation also identifies the location of the facilities: NE 1/4 of Section 5, T6N, Range 4W of the 4th Principal Meridian, Lee County. Ag. Rec. at 1.

The Agency recommends that the Board not certify that the portion of the building over the minibulk and package agrichemical secondary containment structure - L-shaped with greatest dimensions of 60 feet x 78 feet (L-shaped structure) as a pollution control facility, because the primary purpose of that portion of the building is not pollution control. Ag. Rec. at 2-3. However, the Agency recommends that the remaining 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 to eliminate, prevent, or reduce water pollution. Ag. Rec. at 3.

### **FACTS**

Richter is an agrichemical wholesale and retail distribution company located in a rural area two miles south of Blandinsville. Tr. at 7, 10. Richter is a full-scale retail facility that offers a host of agrichemical products or agriproducts to farmers. Tr. at 9. Richter offers full custom application, they store bulk chemicals and liquid fertilizers. Tr. at 9-10.

The L-shaped structure at issue is a solid steel, structured building. Tr. at 12. It has a steel framed structure with a metal corrugated sheeting outer surface. *Id.* Richter calls the area enclosed in the building a package chemical storage area where containers from one-gallon to 15 gallon jugs, 30 gallon barrels and mini-bulk containers with up to a 300 gallon capacity are stored. Tr. at 12. Bagged product, such as insecticides, are also stored in this area. *Id.* The structure is heated. Tr. at 25.

At hearing, Richter presented the testimony of Keith A. Fricke. Mr. Fricke is the environmental regulatory service manager for Richter. Tr. at 7. He has been so employed for approximately four years, and is responsible for all environmental regulatory operations and matters in Illinois, Indiana and Missouri. *Id.* Prior to working for Richter, Mr. Fricke worked ten years for the Department of Agriculture in the agrichemical containment program as a field inspector. Tr. at 8.

Mr. Fricke testified that products are off-loaded in the area under the L-shaped structure and stored within that area until they are purchased. Tr. at 14. After being purchased, the product is loaded on the buyer's vehicle and "taken off" and used. *Id.*

Mr. Fricke testified that the purpose of the L-shaped structure at issue is to keep the outside precipitation away from the product and out of the contained structure. Tr. at 14. He said that if rain water were to get in there, Richter would have to contain the rainwater and then be able to dispose of it or have a method of land applying the product. Tr. at 15. He testified that enclosing the structure is the safest and most appropriate means to handle the threat of rainwater contamination. Tr. at 16.

Mr. Fricke testified that corn insecticide is the only product that would be stored in dry form, and that generally the containers containing liquid would be closed. Tr. at 20. He testified that the L-shaped structure is similar to a warehouse. Tr. at 21. Mr. Fricke testified that some products need to be maintained above a freezing temperature, usually 40 degrees to maintain product integrity. Tr. at 26. He further testified that those products, either package chemical or bulk chemicals, would need heat and could not be stored outdoors. *Id.*

## **ARGUMENTS**

### **Richter's Brief**

Richter argues that it has proven conclusively that the primary purpose of the L-shaped structure is the prevention of pollution. Richter at 5. Richter contends that their witness Mr. Fricke testified that the building was designed to secure the agrichemicals from risks including rain, wind, vandals or agri-terrorists, any of which could cause serious ground water contamination, and that the L-shaped structure is an integral part of those functions. Richter at 5, 9.

Richter argues that an issue exists regarding rainfall, and that regulations require that if the structure is open it would have to accommodate a six-inch rainfall using a dike containment system. Richter at 7, 10. Richter argues that Mr. Fricke testified that the six-inch rainfall can be exceeded from time to time in Illinois, and that this creates unnecessary and inappropriate risks involving the mixing of rain and chemicals. Richter at 10. Richter argues that the L-shaped structure can rid the community and the company of acceptance of this higher risk. *Id.* Richter contends that even a one-inch rain could create a vast amount of rainwater and difficulties in managing the situation. *Id.*

Richter concludes that the L-shaped structure works to secure the building and the environment, and that the policy of the State of Illinois would best be served by encouraging the security measures offered by its use. Richter at 11.

### **The Agency's Brief**

The Agency argues that Richter must prove that the primary purpose of the portion of the facility for which it seeks certification is eliminating, preventing or reducing water pollution. Agency at 3. The Agency contends that every presumption should be against the intention to exempt property from taxation, and any doubts concerning the applicability of an exemption must be resolved in favor of taxation. Agency at 4 *citing* Beelman Trucking v. Cosentino, 191 Ill. Dec. 605 (5th Dist. 1993).

The Agency argues that Richter has chosen heating as a method to maintain product integrity. Agency at 5. The Agency highlights testimony of Mr. Fricke where he stated the area under the L-shaped structure was heated, and that it was necessary to store some products (both packaged and bulk) at a temperature over 40 degrees in order to maintain product integrity. *Id.*

The Agency stands by its engineering judgment contained in its recommendation that the primary purpose of the L-shaped structure is to warehouse the products stored there for future use to protect them from weathering in order to maintain their integrity and provide security. Agency at 2. The Agency maintains that the structure is not a pollution control facility within the meaning of the tax code. *Id.*

### **Richter's Reply**

Richter argues that the fact the L-shaped structure is heated is not a determining or relevant consideration and there is no evidence that it is. Reply at 2. Richter contends that the evidence clearly shows the roof is designed to eliminate rainwater from entering the secondary containment structure, and that the roof eliminates any concern over discharging contaminated rainwater from the secondary containment structure. *Id.*

### **DISCUSSION**

The issue presented to the Board is whether the L-shaped structure was designed and constructed for the primary purpose of eliminating, preventing, or reducing water pollution.

Initially, the Board finds that rainwater contaminated with the chemicals stored in the secondary containment structure would constitute "water pollution" as defined in the Act. *See Supra* 3. The Board also finds that the steel L-shaped structure reduces the possibility of commingling rainwater with chemicals stored at the facility. Nevertheless, before the Board can decide whether the Agency's decision to not certify the L-shaped portion of the building as a "pollution control facility" is correct, the Board must decide whether the record demonstrates that the structure's "primary purpose" is to eliminate, prevent, or reduce such water pollution. *See Reed-Custer*, PCB 87-209, slip op. at 7-10.

The Board finds that Richter did not prove that the L-shaped structure's primary purpose is the prevention or reduction of water pollution. The evidence in the record supports the Agency's assertion that pollution prevention is aided by the L-shaped structure, but that the primary purpose is storage and maintaining product integrity. The evidence shows that it was necessary to store some products (both packaged and bulk) at a temperature over 40 degrees in order to maintain product integrity.

Accordingly, the Board will not certify that L-shaped structure is a pollution control facility.

### CONCLUSION

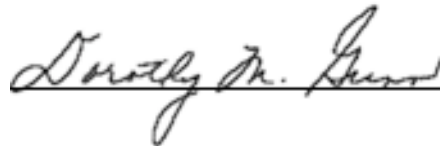
The Board agrees with the Agency's decision to deny tax certification status for the L-shaped structure. The record in this case demonstrates that the primary purpose of the L-shaped structure was not pollution prevention. Accordingly, the Board does not certify that the structure is a "pollution control facility" under the Property Tax Code.

The Board finds and certifies that Richter's remaining 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 Richter 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 March 20, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board