

ILLINOIS POLLUTION CONTROL BOARD  
September 2, 2004

HERITAGE FS, INC. )  
(Property Identification Number 06-10-06- )  
400-005), )  
 )  
Petitioner, )  
 )  
v. ) PCB 05-27  
 ) (Tax Certification - Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J.P. Novak):

On August 9, 2004, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain agrichemical containment structures of Heritage FS, Inc., (Heritage FS) at its Gilman, Kankakee County site as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2002)). But, in the same filing, the Agency recommended denial of tax certification to a portion of the building over the minibulk/package agrichemical secondary containment structure. 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 Heritage FS’s facilities are pollution control facilities. The Board grants certification to the agrichemical containment structures. The Board takes no action today on the negative recommendation as the minibulk/package agrichemical secondary containment structure, since Heritage FS may file a petition to contest it on or before September 14, 2004.

**LEGAL FRAMEWORK**

Under the Property Tax Code, “[i]t is the policy of this State that pollution control facilities should be valued, at 33⅓% 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 Heritage FS for its agrichemical containment structures and minibulk/package agrichemical secondary containment structure on November 27, 2004. Agency Recommendation (Agency Rec.) at 1. On August 9, 2004, the Agency filed a recommendation on the application with the Board. The Agency's recommendation identifies the facilities at issue:

Agrichemical containment structures consisting of three liquid agrichemical operational area containment structures; three bulk liquid agrichemical secondary containment structures; one minibulk/package agrichemical secondary containment structure (42 ft. x 50 ft. x 0.75 ft.); the portion of the building over collection and recovery systems; and one dry fertilizer operational containment structures as approved under the Agency-indorsed Agrichemical Facility Permit No. 93032058 (Log No. 03027350). Agency Rec. at 1.

The portion of the building over the minibulk/package agrichemical secondary containment structure (42 ft. x 50 ft. x 0.75 ft.). Agency Rec. at 2.

The Agency's recommendation also identifies the location of the facilities: the Southeast 1/4 of Section 6, Tract 31 North, Range 12 East of the Third Principal Meridian, in Kankakee County. *Id.* at 1.

The Agency makes separate recommendations relating to the two separate sets of facilities:

**Agrichemical containment structures:** 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. at 2.

**Minibulk/package agrichemical secondary containment structure:** The Agency recommends that the Board deny certification 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)). Agency Rec. at 3. Heritage FS has 35 days from when it was served with a copy of the Agency's recommendation to contest that recommendation to the Board. 35 Ill. Adm. Code 125.206. Any petition for review must be filed on or before September 14, 2004. After that, the Board will determine what further actions may be appropriate.

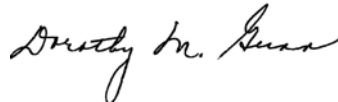
**TAX CERTIFICATE****Agrichemical Containment Structures**

The Board finds and certifies that Heritage FS'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 Heritage FS 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 September 2, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board