

ILLINOIS POLLUTION CONTROL BOARD

April 16, 2009

FLINT HILLS RESOURCES, LP (Carbon)	
Adsorber (NH-804)) (Property ID No. 10-10-)	
200-002-0000),)	
)	
Petitioner,)	
)	
v.)	PCB 09-76
)	(Tax Certification - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On April 8, 2009, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of Flint Hills Resources, LP (Flint Hills) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2006); 35 Ill. Adm. Code 125. Flint Hills’ plant is located near Joliet in Will County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Flint Hills’ air emission sources and/or equipment associated with the company’s chemical manufacturing plant at the site 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 (2006); *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 (2006); *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. *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 (2006); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Flint Hills on December 22, 2008.¹ Rec. at 1. On April 8, 2009, the Agency filed a recommendation on the application with the Board, attaching the application. The Agency's recommendation identifies the facilities at issue:

The pollution control equipment or facilities involved in this request consist of a Carbon Adsorber system. As part of chemical manufacturing operations, the company operates various processes and emission units that are involved in the production of maleic anhydride, including a dehydrator overhead decanter, xylene surge and vacuum pump knockout drums, a vent header system, vent condensers and storage tanks. The Carbon Adsorber system, designated by the company as NH-804, is designed to control volatile organic material ("VOM") and hazardous air pollutant ("HAP") emissions from the ventilation system for the maleic anhydride manufacturing process. *See generally*, Exhibit A at pages 1 and 2 of APC Form 151. Residual emissions of less than 0.5 tons per month and 1 ton per year are allowed to be emitted by the Carbon Adsorber system. *See*, Exhibit A at page 1 of attached Construction Permit No. 05100066. The carbon canisters employed in the recovery system are sent off-site for carbon recovery. Rec.at 1-2.

The Agency's recommendation further states: "[b]ased on information in the application and the underlying purpose of the Carbon Adsorber system to prevent, eliminate or reduce air pollution, it is the Agency's engineering judgment that the described project and/or equipment may be considered 'pollution control facilities'." Rec. at 2.

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 (2006)) because the primary purpose of the facilities is "eliminating, preventing, or reducing water pollution." Rec. at 2.

TAX CERTIFICATE

Based on the Agency's recommendation and Flint Hills' application, the Board finds and certifies that Flint Hills' facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2006)). 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 (2006); *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 (2006)). The Clerk therefore will provide Flint Hills and the Agency with a copy of this order.

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

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) (2006); *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, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 16, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board