

ILLINOIS POLLUTION CONTROL BOARD

April 16, 2009

FLINT HILLS RESOURCES, LP (Scrubber)	
(HT-1404)) (Property ID No. 10-10-200-002-)	
0000),)	
)	
Petitioner,)	
)	
v.)	PCB 09-77
)	(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 Scrubber unit, designated by the company as HT-1404. As part of chemical manufacturing operations, the company maintains an acetic acid storage tank, which contains acetic acid used in the manufacture of isophthalic acid. The construction and installation of the new scrubber will control volatile organic material ("VOM") emissions from the acetic acid storage tank. *See generally*, Exhibit A at pages 1 and 2 of APC Form 151. The Scrubber unit is designed to achieve at least ninety-five percent control efficiency for VOM emissions and is generally required to be operated at all times when the acetic acid storage tank is in operation. *See*, Exhibit A at page 1 of attached Construction Permit No. 05060069. Rec.at 1-2.

The Agency's recommendation further states: "[b]ased on information in the application and the underlying purpose of the Scrubber unit 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.

IT IS SO ORDERED.

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

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.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board