

ILLINOIS POLLUTION CONTROL BOARD
February 21, 2013

ASAY FARMS, INC., (Property Identification))	
Number 46-14-100-009))	
)	
Petitioner,)	
)	
v.)	PCB 13-46
)	(Tax Certification – Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (T.A. Holbrook):

On February 14, 2013, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of Asay Farms, Inc. (petitioner) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2010); 35 Ill. Adm. Code 125. Petitioner’s livestock facility is located at 10179 N. 1600 Avenue, Osco, Henry County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that petitioner’s livestock waste management facility is a pollution control facility.

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 (2010); *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 (2010); *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 (2010); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from petitioner on October 25, 2012. On February 14, 2013, the Agency filed a recommendation (Rec.) on the application, which included petitioner's application for certification and other documents. The Agency's recommendation identifies the facilities at issue as:

Livestock waste management facility consisting of a reinforced concrete manure pit (277' x 71' x 8') overlain by a concrete slatted floor, and six reinforced concrete manure pumpouts (approximately 5' x 6' x 8' each); a four-inch diameter plastic perimeter drain surrounding the manure pit; and a PVC sampling port to prevent manure pit floatation and provide for sampling of drainage water. Rec. at 1.

The Agency's recommendation further describes the facility as having "the primary purpose of collecting, transporting, and storing livestock waste prior to cropland application". *Id.* The Agency's recommendation identifies the location of the facility at issue as NW14, T16N, R2E of the 4th PM in Henry County. *Id.*

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 (2010)) with the primary purpose of eliminating, preventing, or reducing water pollution. *Id.* at 2.

TAX CERTIFICATE

Based on the Agency's recommendation and petitioner's application, the Board finds and certifies that Asay Farms, Inc.'s facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2010)). 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 (2010); *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 (2010)). The Clerk therefore will provide Asay Farms, Inc. and the Agency with a copy of this order.

IT IS SO ORDERED.

Section 11-60 of the Property Tax Code provides that any applicant or holder aggrieved by the issuance, refusal to issue, denial, revocation, modification or restriction of a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate may appeal the Board's finding and order to the Circuit Court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (2010)). *See* 35 ILCS 200/11-60 (2010).

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 21, 2013, 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 T. Therriault, Assistant Clerk
Illinois Pollution Control Board