

ILLINOIS POLLUTION CONTROL BOARD
February 5, 2015

WASTE MANAGEMENT ILLINOIS)
RENEWABLE ENERGY, LLC)
Landfill Gas Fuel Preparation)
(Parcel Number 09-01-100-018))
)
Petitioner,)
)
v.) PCB 15-130
) (Tax Certification – Air)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by D. Glosser):

On December 31, 2014, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of Waste Management Illinois Renewable Energy, LLC (Waste Management) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2012); 35 Ill. Adm. Code 125. Waste Management’s Landfill Gas Fuel Preparation process, as well as related equipment and building, is associated with its reciprocating internal combustion engine facility located at 1247 Gifford Road, Elgin, Kane County. The Agency recommends that the Board issue a tax certificate for Waste Management’s Landfill Gas Fuel Preparation process, but deny a tax certificate for the reciprocating engines that produce electricity. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Waste Management’s Landfill Gas Fuel Preparation process, as well as related equipment and building, are pollution control facilities.

The Board does not make a determination regarding the reciprocating engines that produce electricity. If Waste Management wishes to contest the Agency’s recommendation regarding the reciprocating engines that produce electricity, Waste Management must file a petition to contest with the Clerk within 35 days after the Agency served the recommendation on Waste Management *See* 35 Ill. Adm. Code 125.206(a). If Waste Management fails to timely file a petition, the Board may deny tax certification for the reciprocating engines that produce electricity, based solely on the Agency’s recommendation.

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 (2012); *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 (2012); *see also* 35 Ill.

Adm. Code 125.200(a). Under the statute, the Board determines if the facilities are pollution control facilities; however, the Board is not authorized to assess a value of those facilities.

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 (2012); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Waste Management on December 7, 2010.¹ Rec. at 1. On December 31, 2014, the Agency filed a recommendation with the Board, attaching Waste Management's application (Rec. Exh. A). The Agency's recommendation identifies the facilities at issue:

Process related equipment used in reciprocating internal combustion engine facility that produces electricity from landfill gases. Rec. at 2.

The Agency further describes that "the process consists of a mesh pad scrubber, compressor, gas cooler, discharge/filter separator and gas/gas heat exchanger that collectively act to remove impurities (i.e., water and particulates) from the landfill gases prior to combustion in the reciprocating engine facility." *Id.*

The Agency recommends that the Board certify that the Landfill Gas Fuel Preparation process, as well as related equipment and building, are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2012)) with the primary purpose "to prevent or reduce air pollution." Rec. at 3. However, the Agency recommends that the Board deny a tax certificate for the reciprocating engines that produce electricity.

TAX CERTIFICATE

Based upon the Agency's recommendation, Waste Management's application, and the Board's technical review, the Board finds and certifies that Waste Management's Landfill Gas Fuel Preparation process, as well as related equipment and building identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2012)). The Board makes no finding regarding the assessed value of those facilities. 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 (2012); *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)

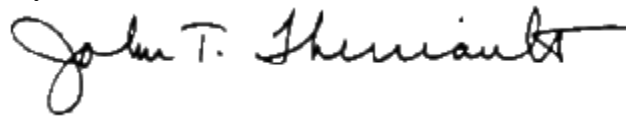
¹ The Agency's recommendation is cited as "Rec. at 1."

(quoting in italics 35 ILCS 200/11-30 (2012)). The Clerk therefore will provide Waste Management 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.* (2012)). *See* 35 ILCS 200/11-60 (2012).

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 5, 2015, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board