

ILLINOIS POLLUTION CONTROL BOARD
April 7, 2016

VOS FARMS (Property Identification Number)
03-05-200-002),)
)
Petitioner,)
)
v.) PCB 16-99
) (Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (D. Glosser):

On March 21, 2016, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of Vos Farms (petitioner) as pollution control facilities for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2014); 35 Ill. Adm. Code 125. Petitioner’s livestock waste facilities are located at 18917 Clark Road, in Chadwick, Whiteside County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies in part, that petitioner’s identified facilities are pollution control facilities¹.

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 (2014); *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 (2014); *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

¹ Consistent with the Agency’s recommendation, the Board did not certify the portion of the proposed facilities that contains no manure storage area. This portion of the facilities is described by the Agency as, a 96 ft. x 104 ft. portion of the Proposed Bed Pack barn that does not contain the manure storage area and is used to house and feed cattle. Petitioner has 35 days from the time the Agency serves the recommendation on him, to file a petition contesting the denial of this portion of the facilities.

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 (2014); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from petitioner on June 10, 2015.² Rec. at 1. On March 21, 2016, the Agency filed a recommendation with the Board, attaching petitioner’s application (Rec. Exh. A). The Agency’s recommendation identifies the facilities at issue:

A Proposed Bed Pack Barn measuring 132 ft. x 104 ft. that serves two purposes, including (1) as a concrete manure storage area (approximately 36 ft. x 104 ft. x 8 ft. high walls), along with the portion of the bed pack barn above the 36 ft. x 104 ft. manure storage area in the Proposed Bed Pack Barn, which is used to collect, transport and/or store livestock wastes prior to cropland application; and (2) a 96 ft. x 104 ft. portion of the Proposed Bed Pack barn that does not contain the manure storage area and is used to house and feed cattle. *Id.*

The Agency recommends that the Board certify as pollution control facilities the portion of the facilities described by the Agency as:

Livestock waste management facilities consisting of a concrete manure storage area (approximately 36ft. x 104 ft. x 8 ft. high walls), along with the portion of the bed pack barn above the 36 ft. x 104 ft. manure storage area in the Proposed Bed Pack Barn, which is used to collect, transport and/or store livestock wastes prior to cropland application. Rec. at 2-3.

This portion of the facilities is a pollution control facility as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2014)) with the primary purpose of eliminating, preventing, or reducing water pollution, or as otherwise provided in 35 Ill. Adm. Code 125.200. Rec. at 2.

TAX CERTIFICATE

Based upon the Agency’s recommendation, petitioner’s application, and the Board’s technical review, the Board finds and certifies that petitioner’s facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2014)). 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 (2014); *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)

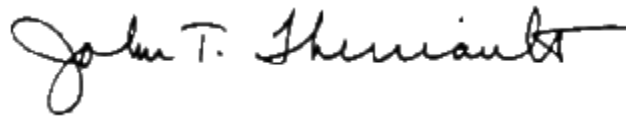
²The Agency’s recommendation is cited as “Rec. at _.”

(quoting in italics 35 ILCS 200/11-30 (2014)). The Clerk therefore will provide petitioner 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.* (2014)). *See* 35 ILCS 200/11-60 (2014).

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 7, 2016, 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 stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board