

ILLINOIS POLLUTION CONTROL BOARD

July 6, 2017

DOUBLE L FARMS PARTNERSHIP)	
(Property Identification Number 29-05-100-)	
007),)	
)	
Petitioner,)	
)	
v.)	PCB 17-86
)	(Tax Certification – Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.M. Santos):

On June 30, 2017, the Illinois Environmental Protection Agency (IEPA or Agency) filed a recommendation that the Board certify certain facilities of Double L Farms Partnership (Double L) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2016); 35 Ill. Adm. Code 125. Double L’s swine facility is located at 1130 North 100 Road East in Thawville, Iroquois County. In this order, the Board describes the legal framework for tax certifications, discusses IEPA’s recommendation, and certifies that Double L’s identified livestock waste management facilities 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 (2016); *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 (2016); *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 IEPA. *See* 35 Ill. Adm. Code 125.202. If IEPA receives a tax certification application, IEPA 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, IEPA’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 (2016); *see also* 35 Ill. Adm. Code 125.216(a).

IEPA RECOMMENDATION

IEPA states that it received a tax certification application from Double L on January 3, 2017.¹ Rec. at 1. On June 30, 2017, IEPA filed a recommendation with the Board, attaching Double L's application (Exh. A). IEPA's recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of a concrete pit (approximately 81 ft. x 296 ft. x 8 ft. deep), eight (8) concrete pump-outs (approximately 6 ft. x 6 ft. x 9 ft. deep), a PVC perimeter tile drain (approximately 6 in. wide x 2 in.² tall x 754 ft. in length), and slotted floors over the pit. *Id.*

IEPA further describes the facilities as being "used to collect, transport, and/or store livestock waste prior to cropland application." *Id.* at 2.

IEPA recommends that the Board certify that the identified livestock waste management facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2016)) with the "primary purpose of eliminating, preventing, or reducing water pollution." Rec. at 2-3; *see also* Exh. A at 1 (IEPA memorandum), 2 (IEPA review sheet).

TAX CERTIFICATE

Based upon IEPA's recommendation, Double L's application, and the Board's technical review, the Board finds and certifies that Double L's livestock waste management facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2016)). 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 (2016); *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 (2016)). The Clerk therefore will provide Double L and IEPA with a copy of this order.

IT IS SO ORDERED.

Member Carter abstained

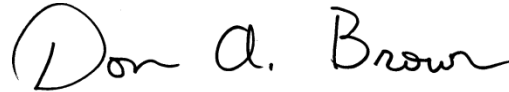
Section 11-60 of the Property Tax Code provides that any applicant or holder aggrieved by the issuance, refusal to issue, denial, revocation, modification or restriction of a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate may appeal the

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

² Double L stated that the size of the perimeter tile drain in 6 x 2 inches (Exh. A at 6), which is reflected in IEPA's Tax Certification Review Sheet and its Technical Memorandum. While IEPA's recommendation refers to a size of 6 x 4 inches, the Board considers this an inadvertent error, and this order reflects the size reported by Double L.

Board's finding and order to the Circuit Court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (2016)). *See* 35 ILCS 200/11-60 (2016).

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 6, 2017, by a vote of 4-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board