

ILLINOIS POLLUTION CONTROL BOARD

July 26, 2017

WSB, LLC (Property Identification Number )  
05-05-36-400-002), )  
 )  
Petitioner, )  
 )  
v. ) PCB 17-72  
 ) (Tax Certification - Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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

On May 24, 2017, the Illinois Environmental Protection Agency (IEPA or Agency) filed a recommendation that the Board certify certain facilities of WSB, LLC (WSB) 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. In the same filing, IEPA also recommended that the Board deny certification of specified other facilities. WSB’s swine finishing facilities are located at 2777 125th Ave. in Matherville, Mercer County.

In this order, the Board describes the legal framework for tax certification, discusses IEPA’s recommendation to certify specific facilities, and certifies identified livestock waste management facilities as pollution control facilities. Next, the Board discusses IEPA’s recommendation to deny certification of specific facilities. Because WSB did not file a petition to contest IEPA’s recommended denial, the Board denies certification of those identified 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 TO CERTIFY**

IEPA states that it received a tax certification application from WSB on November 3, 2016.<sup>1</sup> Rec. at 1. On May 24, 2017, IEPA filed a recommendation with the Board, attaching WSB’s application as part of an Exhibit A (Exh. A). IEPA’s recommendation identifies the facilities for which it recommends certification:

[I]livestock waste handling facilities consisting of one concrete manure pit (approximately 209 ft. x 71 ft. x 8 ft.), the concrete slotted portion of the floor over the manure pit that capture and contain waste generated in the barn above, two pump-out pits (approximately 6 ft. x 6 ft. each) for manure removal from the pit, and a perimeter drainage tile (approximately 2 in. x 6 in.) located around the footing of the manure pit to prevent flotation of the pit. *Id.*

IEPA’s recommendation adds that the facilities are “used to collect, transport and/or store livestock wastes prior to cropland application.” *Id.* at 2.

IEPA recommends that the Board certify that these specified 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 3; *see* Exh. A at 1 (IEPA memorandum), 3 (IEPA review sheet).

### **TAX CERTIFICATE**

Based upon IEPA’s recommendation, WSB’s application, and the Board’s technical review, the Board finds and certifies that WSB’s livestock waste management facilities identified above 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 35 ILCS 200/11-30 (2016)). The Clerk therefore will provide WSB and IEPA with a copy of this order.

### **IEPA RECOMMENDATION TO DENY CERTIFICATION**

IEPA’s May 24, 2017 recommendation also identifies the facilities for which it recommended that the Board deny certification:

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<sup>1</sup> IEPA’s recommendation is cited as “Rec. at \_.”

[t]he portions of the buildings above the manure pit. Rec. at 3; Exh. A at 1-2 (IEPA memorandum), 3 (IEPA review sheet).

The recommendation states that “[t]he primary purpose of this portion of the facility is to provide an area for feeding animals, keeping animals clean, sheltering animals from outside weather conditions, reduce bedding needs and is not pollution control.” Rec. at 3; *see* Exh. A at 2 (IEPA memorandum).

In response to IEPA’s recommendation, the Board issued an order stating:

“[i]f WSB wishes to contest the Agency’s recommendation regarding the portions of the buildings above the manure pit, WSB must file a petition to contest with the Clerk within 35 days after the Agency served the recommendation on WSB. *See* 35 Ill. Adm. Code 125.206(a). If WSB fails to timely file a petition, the Board may deny tax certification for the portions of the buildings above the manure pit based solely on the Agency’s recommendation. WSB, LLC v. IEPA, PCB 17-72, slip op. at 1 (June 8, 2017).

IEPA’s certificate of service states that it mailed the recommendation to WSB by First Class U.S. Mail on May 24, 2017. Under the Board’s procedural rules, service on WSB is presumed to have occurred four days later; here on May 30, 2017, as the 28th was a Sunday, and the 29th was the Memorial Day state holiday. 35 Ill. Adm. Code 101.300(c)(4); *see* 35 Ill. Adm. Code 101.300(a).

WSB did not file a timely petition to contest IEPA’s recommended denial of certification for the facilities identified above. *See* 35 Ill. Adm. Code 125.206(a). Accordingly, based on IEPA’s recommendation, the Board denies certification for those facilities.

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.* (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 26, 2017, by a vote of 5-0.



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Don A. Brown, Clerk  
Illinois Pollution Control Board