

ILLINOIS POLLUTION CONTROL BOARD

December 7, 2017

ELITE PORK LLC (Property Identification	)	
Number 19-01-200-005),	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 18-34
	)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On November 22, 2017, the Illinois Environmental Protection Agency (IEPA or Agency) filed a recommendation that the Board certify certain facilities of Elite Pork LLC (Elite Pork) 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. Elite Pork’s swine production facility is located at 20616 Baseline Road in Esmond, Ogle County. In this order, the Board describes the legal framework for tax certifications, discusses IEPA’s recommendation, and certifies that Elite Pork’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 Elite Pork on June 5, 2017.<sup>1</sup> Rec. at 1. On November 22, 2017, IEPA filed a recommendation with the Board, attaching Elite Pork's application (Rec. Exh. A). IEPA's recommendation identifies the facilities at issue:

[l]ivestock waste management facilities consisting of: a concrete deep manure pit (approximately 250 ft. x. 71 ft. x 8 ft.); one concrete shallow manure pit (approximately 76 ft. x 46 ft. x 2 ft.); the concrete slotted portion of the floor over the two manure pits that capture and contain waste generated in the barns above; eight (approximately 6 ft. x 6 ft. x 8 ft. each) concrete pump-out pits to allow manure removal for the deep manure pit; a PVC pipe (approximately 50 ft. x 8 in.) that transfers manure from the shallow pit to the deep pit; a PVC perimeter drainage tile (approximately 758 ft. x 6 in x 2.25 in. wide) located around the footing of the deep manure pit to prevent flotation of the pit; and a concrete manhole (approximately 2 ft. dia. x 8 ft. deep) serving the perimeter drainage tile. *Id.* at 1-2.

IEPA further describes Elite Pork's facilities as being "used to collect, transport and/or store livestock wastes prior to cropland application." *Id.* at 2.

IEPA recommends that the Board certify that Elite Pork's 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 also* Rec. Exh. A at 1 (IEPA memorandum), 2 (IEPA review sheet).

### **TAX CERTIFICATE**

Based upon IEPA's recommendation, Elite Pork's application, and the Board's technical review, the Board finds and certifies that Elite Pork'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) (citing 35 ILCS 200/11-30 (2016)). The Clerk therefore will provide Elite Pork and IEPA 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


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<sup>1</sup> IEPA's recommendation is cited as "Rec. at \_."

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). Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

<b>Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court</b>	
<b>Parties</b>	<b>Board</b>
Elite Pork LLC Attn: Carrie Pollard 2435 Bethany Road Sycamore, Illinois 60178	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
Illinois Environmental Protection Agency Attn: Roberto M. Durango 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 7, 2017, by a vote of 5-0.



Don A. Brown, Clerk  
 Illinois Pollution Control Board