

ILLINOIS POLLUTION CONTROL BOARD
December 21, 2017

SOUTH OF 136, LLC (Property Identification))	
Number 14-000-048-05),)	
)	
Petitioner,)	
)	
v.)	PCB 18-40
)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On November 30, 2017, the Illinois Environmental Protection Agency (IEPA or Agency) filed a recommendation that the Board certify certain facilities of South of 136, LLC (South of 136) 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. South of 136’s swine finishing facility is located at 10557 E. 1800th Street in Macomb, McDonough County. In this order, the Board describes the legal framework for tax certifications, discusses IEPA’s recommendation, and certifies that South of 136’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 South of 136 on August 7, 2017.¹ Rec. at 1. On November 30, 2017, IEPA filed a recommendation with the Board, attaching South of 136's application (Rec. Exh. A). IEPA's recommendation identifies the facilities at issue:

[l]ivestock waste management facilities consisting of: two concrete manure pits approximately 281 ft. x 71 ft. x 8 ft. each); the concrete slatted portion of the floor over the manure pits that capture and contain waste generated in the barns above; and eight (approximately 6 ft. x 6 ft. each) pump out pits to allow manure removal from the manure pits. *Id.* at 2.

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 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* Rec. Exh. A at 1 (IEPA memorandum), 2 (IEPA review sheet).

TAX CERTIFICATE

Based upon IEPA's recommendation, South of 136's application, and the Board's technical review, the Board finds and certifies that South of 136'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 IEPA 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 South of 136 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 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.

¹ The Agency's recommendation is cited as “Rec. at _.”

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
South of 136, LLC Attn: Scott Herndon 8960 North 450th Road Macomb, Illinois 61455	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. Boxes 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