

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2018

O'LEARY FARMS (Property Identification)	
No. 05-05-08-300-004),)	
)	
Petitioner,)	
)	
v.)	PCB 19-47
)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.K. Zalewski):

On August 10, 2018, the Illinois Environmental Protection Agency (IEPA or Agency) filed a recommendation that the Board certify certain facilities of O'Leary Farms 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. O'Leary Farms' swine operation is located at 2324 160th Avenue in Aledo, Mercer County. In this order, the Board describes the legal framework for tax certifications, discusses IEPA's recommendation, and certifies that O'Leary Farms' identified livestock waste handling 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 O’Leary Farms on January 10, 2018.¹ Rec. at 1. On August 10, 2018, IEPA filed a recommendation with the Board, attaching O’Leary Farms’ application (Rec. Exh. A). On September 17, 2018, IEPA filed a motion to file an amended recommendation (Am. Rec.). The Board grants the motion to avoid undue delay and because no material prejudice would result. *See* 35 Ill. Adm. Code 101.500(d). IEPA’s recommendation (Rec.) identifies the facilities at issue:

one concrete manure pit (approximately 391 ft. × 52 ft. × 8 ft.). the concrete slatted portion of the floor over the manure pit that capture and contain waste generated in the barn above, a total of ten pumpout pits (approximately 6 ft. × 6 ft. each) to allow manure removal from the manure pit, and one perimeter drainage pipe (4 in. dia.) located around the footing of manure pit to prevent flotation of the pit. Rec. at 1.

The Agency clarifies that the length of the plastic perimeter drainage tile around the manure pit is 1,050 ft. in length, not 536 ft. (Am. Rec.). IEPA further describes the facilities as “used to collect, transport, and/or store livestock waste prior to cropland application.” *Id.*

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

TAX CERTIFICATE

Based upon IEPA’s recommendation, O’Leary Farms’ application, and the Board’s technical review, the Board finds and certifies that O’Leary Farms’ 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 O’Leary Farms 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

¹ IEPA’s recommendation is cited as “Rec. at _.”

reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court	
Parties	Board
O'Leary Farms Attn.: James O'Leary 2564 160th Avenue Aledo, Illinois 61231	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: Assistant Counsel Jacob H. Smith 1021 N. Grand Ave. E. Springfield, Illinois 62794-9276	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 20, 2018, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board