

ILLINOIS POLLUTION CONTROL BOARD
December 20, 2001

THE AMERICAN COAL COMPANY –)
GALATIA (Perimeter Ditch) (Property)
Identification Numbers 11-1-083-01, 1-1-088-)
01, 1-1-088-03, 1-1-088-04, 11-1-093-01, 11-)
1-093-02, 11-1-093-03, 11-1-093-05, 11-1-)
093-06, 11-1-093-07, 11-1-095-01, 11-1-095-)
02),)
)
Petitioner,)
)
v.) PCB 02-76
) (Tax Certification)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by C.A. Manning):

On December 12, 2001, the Illinois Environmental Protection Agency (Agency) filed a recommendation on whether the Board should certify certain facilities of The American Coal Company (American Coal) as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2000)). The Agency filed the recommendation under Part 125 of the Board’s procedural rules (35 Ill. Adm. Code 125). The Agency recommended that the Board issue a tax certificate for the perimeter ditch of American Coal’s new 472-acre coal cleaning refuse landfill (perimeter ditch), but deny a tax certificate for the 472-acre coal cleaning refuse landfill and addition of agricultural lime (landfill).

The Board is not ruling today on whether American Coal’s landfill is a pollution control facility under the Property Tax Code (35 ILCS 200/11-10 (2000)). Instead, in a separate order, the Board is opening docket PCB 02-83 to address the Agency’s recommendation on the landfill.

In this order, the Board first describes the legal framework for tax certifications, discusses the Agency’s recommendation on the perimeter ditch, and certifies that the perimeter ditch is a pollution control facility.

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 (2000); *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 (2000); *see also* 35 Ill. Adm. Code 125.200(a).

Under Section 125.202 of the Board’s procedural rules, a person may submit an application for tax certification to the Agency. 35 Ill. Adm. Code 125.202. If the Agency receives a tax certification application, the Agency must file with the Board a recommendation on the application, unless the applicant withdraws the application. 35 Ill. Adm. Code 125.204(a). Among other things, the Agency’s filing must recommend that the Board issue or deny tax certification. 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 (2000); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from American Coal on January 31, 2001. Agency Recommendation (Agency Rec.) at 1. On December 12, 2001, the Agency filed a recommendation on the application with the Board. The Board attaches the Agency’s recommendation and makes it part of this order. The Agency’s recommendation identifies the facility at issue: “[t]he perimeter ditch of the new 472-acre coal cleaning refuse landfill.” *Id.* at 2. The Agency’s recommendation further describes the facility: the perimeter ditch “is conveying water back to a pond system” which “collects all water at the site and is used as slurry water.” *Id.* at 2. The Agency’s recommendation also identifies the location of the facility: “SW 1/4 of Section 17, E 1/2 of the NE 1/4 of Section 19 and NW 1/4 and the N 1/2 of the SW 1/4 of Section 20 Township 8 South-Range 6 East of the 3rd P.M.” in Saline County. *Id.* at 1-2, Exhibit A.

The Agency recommends that the Board certify that the perimeter ditch is a pollution control facility as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2000)) because the primary purpose of the facility is “eliminating, preventing, or reducing water pollution.” Agency Rec. at 2-3.

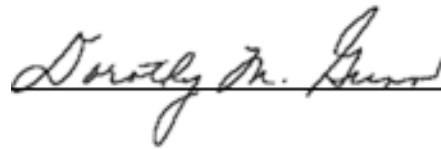
TAX CERTIFICATE

The Board finds and certifies that American Coal’s perimeter ditch identified in this order is a pollution control facility under the Property Tax Code (35 ILCS 200/11-10 (2000)). 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 (2000); *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 (2000)). The Clerk therefore will provide American Coal and the Agency with a copy of this order.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 20, 2001, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board