

ILLINOIS POLLUTION CONTROL BOARD
May 15, 2008

JEFF HANK - ALEDO (Property)	
Identification Number 03-03-27-100-004),)	
)	
Petitioner,)	
)	
v.)	PCB 08-74
)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On May 2, 2008, the Illinois Environmental Protection Agency (Agency) filed a motion to amend the Board’s final order of April 17, 2008. Based on the Agency’s April 14, 2008 recommendation, the Board on April 17, 2008, certified certain structures of Jeff Hank - Aledo (petitioner) as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2006); *see also* 35 Ill. Adm. Code 125). Petitioner’s swine production facility is located at 1361 130th Street in Aledo, Mercer County. For the reasons below, the Board grants the Agency’s motion to amend and by this order issues a new tax certification, which supersedes the tax certification issued on April 17, 2008.

In this order, the Board first describes and rules upon the Agency’s motion to amend. Next, the Board sets forth the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that petitioner’s manure management structures are pollution control facilities.

MOTION TO AMEND

In the May 2, 2008 motion to amend (Motion), the Agency explains that its April 14, 2008 recommendation contained incorrect descriptions of the facilities at issue. Specifically, the Agency “incorrectly described both Jeff Hank’s pollution control facilities and their location.” Motion at 1. The Board’s April 17, 2008 order in turn reflected the incorrect descriptions from the recommendation. *Id.* The Agency’s motion sets forth the correct descriptions and requests that the Board amend the order of April 17, 2008, to remedy these inaccuracies. *Id.* at 1-2.

The Board grants the motion to amend and will set forth the correct descriptions below when discussing the Agency’s recommendation. To avoid any potential confusion, the Board today issues a new tax certification, superseding the tax certification issued on April 17, 2008.

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 (2006); *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 (2006); *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. *See* 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. *See* 35 Ill. Adm. Code 125.204(a). Among other things, the Agency’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 (2006); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

In the Agency recommendation of April 14, 2008 (Agency Rec.), the Agency states that it received a tax certification application from petitioner on February 2, 2007. Agency Rec. at 1. The application is attached to the Agency recommendation. The Agency’s motion to amend of May 2, 2008, correctly identifies the facilities at issue:

Livestock waste management facilities consisting of two concrete manure pits (each 191 ft. x 51 ft. x 8 ft. deep) each with 5 concrete pump out pits (each 6 ft. x 5 ft. x 9 ft. deep) and the slotted concrete portion of the floor over the manure pits. Both manure pits are surrounded by a total of approximately 1500 feet of 4-inch diameter plastic perimeter foundation drainage tubing. The foundation tubing also includes 2 inspection ports (each 8 ft. deep 4-inch diameter PVC pipe). Motion at 1.

The Agency’s recommendation describes the facilities: “These livestock waste management facilities are used to collect, transport and/or store livestock wastes prior to cropland application.” Agency Rec. at 2. The Agency’s motion to amend also correctly identifies the location of the facilities: NW 1/4 of Section 34, T15N, R4W of the 4th PM in Mercer County. Motion at 2.

The Agency recommends that the Board certify that the identified facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2006)) because the primary purpose of the facilities is “eliminating, preventing, or reducing water pollution.” Agency Rec. at 2.

TAX CERTIFICATE

Based on the filings described above, the Board finds and certifies that petitioner's facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2006)). This certificate supersedes the certificate issued by the Board on April 17, 2008, in this proceeding. Under Section 11-25 of the Property Tax Code, the effective date of the certificate issued today 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 (2006); *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 (2006)). The Clerk therefore will provide petitioner 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) (2006); *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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 15, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board