

JUN 05 2000

STATE OF ILLINOIS

ifca

ILLINOIS FERTILIZER & CHEMICAL ASSOCIATION

P.O. Box 186
St. Anne, Illinois 60964-0186
Telephone: (815) 427-6644
Fax No.: (815) 427-6573

June 2, 2000

P.C. # 7

Clerk's Office
Illinois Pollution Control Board
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

RE: Comments Docket R00-20; 35 Ill. Adm. Code 125, Tax Certifications

On behalf of the Illinois Fertilizer & Chemical Association (IFCA) please accept the following comments on the Illinois Pollution Control Board's proposed rulemaking, Docket R00-20, related to tax certifications for pollution control facilities, 35 Ill. Adm. Code Part 125. We appreciate the Board's consideration of these comments at this late date; we only recently became aware of this proposed rulemaking and its potential impact on our membership.

IFCA's membership consists of owners, managers and employees of retail agrichemical facilities located in Illinois, as well as representatives of pesticide, fertilizer and agricultural equipment manufacturers. The majority of IFCA's 1000+ members are directly responsible for serving the needs of Illinois' agricultural producers. IFCA is committed to developing and helping implement programs that upgrade and enhance the safe handling and efficient use of agricultural chemicals and commercial fertilizers.

Many agrichemical retailers in Illinois have taken advantage of the tax certification process for pollution control facilities. Since the late 1980's, agrichemical facilities have been required to install and maintain sophisticated secondary containment structures for the containment of bulk pesticides and fertilizer, as well as concrete load-out areas for the mixing, loading and transfer of these products into application equipment. In addition to concrete dikes and load-out areas, many facilities have also constructed steel buildings over their pesticide and fertilizer storage areas to reduce any potential for product run-off from precipitation and to also further protect the storage tanks, bins and their contents from wind and storm damage.

Agrichemical facilities are subject to product storage, handling and containment regulations promulgated under Title 8, Part 255 of the Illinois Administrative Code. The Illinois Department of Agriculture administers this program and requires registration of all commercial and non-commercial bulk agrichemical facilities. In addition, IDA requires these facilities to obtain a permit prior to construction of the containment devices. The Illinois EPA, through a memorandum of understanding with IDA, also reviews and approves the permits for these facilities. If the facility makes any modifications to their containment structures, they must update their permit with IDA; all permits must be renewed every five years.

These facilities are also subject to annual inspection by IDA personnel to ensure compliance with these regulations. In working with IEPA on the tax certification approval process, agrichemical facilities have been able to obtain pollution control facility tax certification status for their containment structures including concrete dikes and operational areas for the storage, mixing and loading of pesticides and fertilizers as well as rinsate collection devices and the building over the pesticide storage and load-out area. However, IEPA has chosen to deny certification for the building over the dry fertilizer storage and load-out area.

IFCA disagrees with IEPA's decision to deny certification for the dry fertilizer buildings as pollution control facilities. We support this proposed rule, which will transfer this certification program to the IPCB as part of its procedural rules. We have found the Board to be fair and equitable in its review of environmental regulations and believe that the tax certification applications should be reviewed and decided upon by the Board. While we also have great respect for the IEPA and its past handling of this program, we feel that in the case of dry fertilizer buildings, we have reached an impasse with the Agency regarding their interpretation that these buildings are not pollution control facilities.

There is both logical and legal reasoning behind our request that dry fertilizer buildings be granted tax certification status. These buildings are constructed and maintained in accordance with a permit that is reviewed and granted by the IDA. The purpose of these buildings is to substantially reduce the potential for environmental contamination by protecting dry fertilizer from wind, precipitation and potential run-off. Obviously, dry fertilizer that is exposed to rain and wind on a daily basis can potentially contaminate the surrounding air, soil and water. By protecting the product with a building, it virtually eliminates the possibility of environmental contamination from the fertilizer storage area.

The Property Tax Code defines "pollution control facilities" as:

Any system, method, construction, device or appliance appurtenant thereto, or any portion of any building or equipment, that is designed, constructed, installed or operated for the primary purpose of (a) eliminating, preventing, or reducing air or water pollution as the terms "air" and "water pollution" are defined in the Environmental Protection Act (35 ILCS 200/11-10).

Considering this definition, IFCA believes that the dry fertilizer building qualifies absolutely as a pollution control facility. In the past, many dry fertilizer facilities did not have buildings over their fertilizer bins. But over the years, improved technology along with enhanced understanding and concern for our environment has given our industry a great appreciation for product containment. The concrete loading areas allow us to capture, recover and utilize any spilled product. The building over the fertilizer protects the product from precipitation and wind, ensuring that no leaching or blowing of the dry fertilizer away from the building occurs. From our perspective, we have difficulty understanding how IEPA can deny tax certification status for these structures, especially when they are approved and permitted by IDA—with joint review and approval by the Agency.

Interestingly, IEPA has consistently approved tax certification status for the buildings over pesticide storage and load-out areas. The purpose of these buildings is the same as for fertilizer: to protect the product from the elements and prevent any loss of product to the surrounding environment. We simply ask that the same consideration be given to fertilizer buildings. It just makes sense.

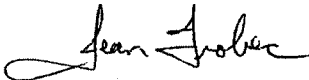
There is also strong legal precedent to grant tax certification status for fertilizer buildings. In reviewing a recent tax certification appeal (Cass County Service Company vs. IEPA, PCB 99-31) pertaining to buildings over petroleum load-out areas, the PCB disagreed with the Agency's decision to deny tax certification status for these steel buildings. Upon reviewing the information presented, the board determined that the steel building was designed and constructed for the primary purpose of preventing or reducing water pollution, and the Board certified that the steel building is a "pollution control facility" under the Property Tax Code.

Dry fertilizer buildings serve the same general purpose as buildings over petroleum loading areas. Their primary purpose is to protect the environment by preventing or reducing water and air pollution. We therefore respectfully ask the Board, in adopting these procedural rules for tax certifications, to grant pollution control facility status to agrichemical facilities that apply for this tax certification status for their containment structures, including their fertilizer buildings. We feel this action by the Board would be consistent with the decision in Cass County Service Company appeal. The same reasoning applies to protecting the environment from fertilizer contamination just as does for protecting the environment from petroleum contamination.

IFCA supports adoption of this proposed rule, which will transfer the tax certification program from IEPA to the IPCB. We appreciate the Board's consideration of our request to include fertilizer buildings in the tax certification program. If you require additional information on this issue or have any questions, please contact me at (309) 828-1041. Thank you.

Kind regards,

The Illinois Fertilizer & Chemical Association



Jean Trobec
Government Relations Director

cc: Lloyd Burling