

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER I: POLLUTION CONTROL BOARD

PART 125
TAX CERTIFICATIONS

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AUTHORITY: Implementing and authorized by Sections 11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55 of the Property Tax Code [35 ILCS 200/11-5, 11-10, 11-20, 11-25, 11-30, 11-35, 11-40, 11-50, and 11-55] and Sections 26 and 27 of the Environmental Protection Act (the Act) [415 ILCS 5/26 and 27].

SOURCE: Adopted in R00-20 at 25 Ill. Reg. 642, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8838, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2402, effective January 27, 2015; amended in R16-17 at 40 Ill. Reg. 8007, effective May 20, 2016.

SUBPART A: GENERAL PROVISIONS

Section 125.100 **Applicability**

- a) This Part applies to any person seeking, for property tax purposes, a Board certification that a facility or portion thereof is a pollution control facility, as defined in Section 125.200(a)(1) of this Part, or that a device is a low sulfur

dioxide emission coal fueled device, as defined in Section 125.200(b)(1) of this Part.

- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all adjudicatory proceedings before the Board. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

Section 125.102 Severability

If any provision of this Part or its application to any person is adjudged invalid, the adjudication does not affect the validity of this Part as a whole or of any portion not adjudged invalid.

Section 125.104 Definitions

For the purpose of this Part, words and terms will have the meaning as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

SUBPART B: TAX CERTIFICATION OF POLLUTION CONTROL FACILITIES AND LOW SULFUR DIOXIDE EMISSION COAL FUELED DEVICES

Section 125.200 General

- a) Pollution Control Facilities. *For tax purposes, pollution control facilities shall be certified as such by the Board. [35 ILCS 200/11-20]*
 - 1) “Pollution control facility” means, for purposes of this Part, *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: eliminating, preventing, or reducing air or water pollution, as the terms “air pollution” and “water pollution” are defined in the Act; or treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property. This term does not include any of the following:*
 - A) *Any facility with the primary purpose of eliminating, containing, preventing or reducing radioactive contaminants or energy, or treating waste water produced by the nuclear generation of electric power;*

- B) *Large diameter pipes or piping systems used to remove and disperse heat from water involved in the nuclear generation of electric power;*
 - C) *Any facility operated by any person other than a unit of government, whether within or outside of the territorial boundaries of a unit of local government, for sewage disposal or treatment; or*
 - D) *Land underlying a cooling pond. [35 ILCS 200/11-10]*
- 2) *It 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]*
- b) **Low Sulfur Dioxide Emission Coal Fueled Devices.** *For tax purposes, a low sulfur dioxide emission coal fueled device shall be certified as such by the Board. [35 ILCS 200/11-50]*
- 1) *“Low sulfur dioxide emission coal fueled device” means, for purposes of this Part, any device used or intended for the purpose of burning, combusting or converting locally available coal in a manner which eliminates or significantly reduces the need for additional sulfur abatement that would otherwise be required under State or Federal air emission standards. For purposes of this definition, the word device includes all machinery, equipment, structures and all related apparatus, including coal feeding equipment, of a coal gasification facility designed to convert locally available coal into a low sulfur gaseous fuel and to manage all waste and by-product streams. [35 ILCS 200/11-40]*
 - 2) *It is the policy of this State that the use of low sulfur dioxide emission coal fueled devices should be encouraged as conserving nonrenewable resources, reducing pollution and promoting the use of abundant, high-sulfur, locally available coal as well as promoting the health and well-being of the people of this State, and should be valued at 33 1/3% of their fair cash value. [35 ILCS 200/11-35]*

Section 125.202 Tax Certification Application

A person may apply for tax certification by submitting a tax certification form to the Agency on a form or forms that the Agency may prescribe.

Section 125.204 Agency Recommendation

- a) If the Agency receives a tax certification application under Section 125.202 of this Subpart, the Agency must file a recommendation on the application with the Clerk, unless the applicant withdraws the application. The Agency's filing must:
 - 1) Identify the name and address of the applicant;
 - 2) Identify the location of the facility or portion thereof or the device to which the recommendation applies;
 - 3) Identify the facility or portion thereof or the device to which the recommendation applies;
 - 4) Recommend that the Board issue or deny tax certification; and
 - 5) Set forth the Agency's reasoning for the recommendation.
- b) If the Agency recommends that the Board deny tax certification, the Agency's filing must state that the applicant has 35 days after the date of service thereof to file a petition with the Board to contest the Agency recommendation. If the Agency recommends that the Board deny tax certification due to informational deficiencies in the application, the Agency's filing must identify the types of information needed to correct the deficiencies.
- c) The Agency must serve the applicant with a copy of the filing under this Section.

Section 125.206 Petition to Contest

- a) If the applicant wishes to contest an Agency recommendation that the Board deny tax certification, the applicant must file a petition to contest with the Clerk -within 35 days after the Agency serves the applicant under Section 125.204(c) of this Subpart. The petition must:
 - 1) Specify the grounds for contesting the Agency's recommendation; and
 - 2) Specify the date on which the Agency served the applicant under Section 125.204(c) of this Subpart.
- b) The applicant must serve the Agency with a copy of any petition to contest under subsection (a) of this Section.

Section 125.208 Agency Record

The Agency must file with the Board the entire record on which it based its recommendation within 30 days after the applicant files a petition to contest under Section 125.206-or as the Board or hearing officer orders. If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. Pursuant to 35 Ill. Adm. Code 101.302(h)(2), the Agency must file the record through COOL or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. The record must comply with 35 Ill. Adm. Code 105.116(b).

(Source: Amended at 40 Ill. Reg. 8007, effective May 20, 2016)

Section 125.210 Public Hearing

- a) The Board will hold a public hearing in a tax certification proceeding if:
 - 1) The applicant files a petition to contest in accordance with Section 125.206, unless the Board disposes of the petition on a motion for summary judgment brought pursuant to 35 Ill. Adm. Code 101.516;
 - 2) The applicant or holder timely requests a hearing after the Board provides notice pursuant to Section 125.216(c); or
 - 3) The Board, in its discretion, determines that a hearing would be advisable.
- b) If a hearing is to be held, the hearing officer will set a time and place for the hearing. The hearing officer will attempt to consult with the applicant and the Agency before scheduling a hearing. Hearings will be conducted pursuant to 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 40 Ill. Reg. 8007, effective May 20, 2016)

Section 125.212 Hearing Notice

After receiving notification from the hearing officer of the scheduled hearing date made pursuant to Section 125.210 of this Subpart, the Clerk will, in accordance with 35 Ill. Adm. Code 101, cause publication of a notice of hearing in a newspaper of general circulation in the county where the facility or portion thereof or the device for which the applicant seeks tax certification is located.

Section 125.214 Burden of Proof

If the applicant files a petition to contest under Section 125.206 of this Subpart or the Board otherwise directs that a hearing be held pursuant to Section 125.210 of this Subpart, the applicant has the burden to prove that the facility or portion thereof for which it seeks tax certification is a pollution control facility, as defined in Section 125.200(a)(1) of this Subpart, or that the device for which it seeks tax certification is a low sulfur dioxide emission coal fueled device, as defined in Section 125.200(b)(1) of this Subpart.

Section 125.216 Board Action

- a) *Pollution Control Facilities. If it is found that the claimed facility or relevant portion thereof is a pollution control facility as defined in Section 125.200(a)(1) of this Part, the Board shall enter a finding and issue a certificate to that effect. The certificate shall require tax treatment as a pollution control facility, but only for the portion certified if only a portion is certified. The effective date of a certificate shall be the date of the application for the certificate or the date of the construction of the facility, whichever is later. [35 ILCS 200/11-25]*
- b) *Low Sulfur Dioxide Emission Coal Fueled Devices. If it is found that the claimed device meets the definition of low sulfur dioxide emission coal fueled device as set forth in Section 125.200(b)(1) of this Part, the Board shall enter a finding and issue a certificate that requires tax treatment as a low sulfur dioxide emission coal fueled device. The effective date of a certificate shall be on January 1 preceding the date of certification or preceding the date construction or installation of the device commences, whichever is later. [35 ILCS 200/11-55]*
- c) *Before denying any certificate, the Board shall give reasonable notice in writing to the applicant and provide the applicant a reasonable opportunity for a fair hearing pursuant to Section 125.210 of this Subpart. [35 ILCS 200/11-30] On like notice to the holder and opportunity for hearing, the Board may on its own initiative revoke or modify a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate whenever any of the following appears:*
 - 1) *The certificate was obtained by fraud or misrepresentation;*
 - 2) *The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of pollution control facilities or a low sulfur dioxide emission coal fueled device; or*
 - 3) *The pollution control facility to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different purpose. [35 ILCS 200/11-30]*

- d) 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 ILCS 200/11-30].

- e) *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 finding and order of the Pollution Control Board, under the Administrative Review Law, to the circuit court* [35 ILCS 200/11-60].

(Source: Amended at 39 Ill. Reg. 2402, effective January 27, 2015)