

ILLINOIS POLLUTION CONTROL BOARD
April 16, 2020

DARE FARMS LLP (Property Identification)
Number 09-08-13-100-001),)
)
Petitioner,)
)
v.) PCB 20-41
) (Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by C.M. Santos):

On February 13, 2020, Dare Farms LLP (Dare Farms) filed a petition to contest a recommendation of the Illinois Environmental Protection Agency (Agency) that the Board deny tax certification for specified facilities of Dare Farms (Rec.). *See* 35 Ill. Adm. Code 101.300(b), 125.206(a). The petition concerns Dare Farms’ cattle operation located at 27985 North Dare Road in Canton, Fulton County.

On February 20, 2020, the Board issued an order accepting the petition as timely filed but finding it deficient for two failures: not indicating that the petition was filed by an attorney; and not including proof that a copy of the petition was served on the Agency. That same order and directed Dare Farms to file an amended petition by March 23, 2020, remedying these deficiencies. On March 20, 2020, Dare Farms filed an amended petition through its attorney, with proof of service on the Agency. For the reasons below, the Board accepts the amended petition for hearing.

Facilities certified by the Board as “pollution control facilities” receive preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2018); 35 Ill. Adm. Code 125. On January 8, 2020, the Agency recommended that the Board deny a tax certificate for the following facilities located at Dare Farms’ Fulton County cattle operation:

A covered feed storage building measuring 80 ft. x 150 ft.;

A solid pack building with open front and back sides measuring 50 ft. x 96 ft.;

A cattle loafing building measuring 30 ft. x 72 ft.;

A cattle loafing building measuring 33 ft. x 108 ft.; and

A solid pack building measuring 100 ft. x 200 ft. (except the portions of concrete curbing that are recommended for approval). Rec. at 4.¹

In its amended petition (Am. Pet.) contesting the recommendation, Dare Farms states that “this past year the buildings in question kept approximately 1,287,000 gallons of water from coming in contact with manure,” “they are doing an excellent job of keeping literally tons of water clean,” and the covered feed storage building “was constructed exclusively to prevent water pollution from all the rain leaching through the stored feed.” Am. Pet. at 2-3. Dare Farms’ amended petition meets the content requirements of 35 Ill. Adm. Code 125.206.

The Board accepts the amended petition for hearing. *See* 35 Ill. Adm. Code 125.210(a)(1). Dare Farms “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 [35 Ill. Adm. Code] Section 125.200(a)(1) . . .” 35 Ill. Adm. Code 125.214. The Board will consider the Agency’s record of Dare Farms’ tax certification application as well as any evidence admitted at hearing. *See Cass County Service Co. v. IEPA*, PCB 99-31, slip op. at 2 (Jan. 20, 2000).

Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties’ preferences, and the proceeding’s complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 125.210(b).

The Board’s procedural rules generally require the Agency to file the entire record of its decision with the Board within 30 days after the filing of the amended petition for review on March 20, 2020. *See* 35 Ill. Adm. Code 105.116(a), 105.410(a). On April 13, 2020, the Agency filed a motion to extend this deadline (Mot.). The Agency states that, because of restrictions addressing COVID-19, it is unable to compile and file the record. The Agency requests that the Board extend the filing deadline to June 1, 2020, and it reports that the petitioner’s counsel has been contacted and does not oppose the request. Under these circumstances, the Board grants the unopposed motion and extends the Agency’s deadline to file the record to June 1, 2020.

The record must comply with the Board’s requirements for content, organization, and certification. *See* 35 Ill. Adm. Code 101.1030(g), 105.116(b), 125.208. In addition, the Agency must file the record electronically instead of in paper. Specifically, the record must be filed through the Clerk’s Office On-Line (COOL) or on compact disk or other portable electronic data storage device and, to the extent technically feasible, in text-searchable Adobe PDF. *See* 35 Ill. Adm. Code 101.302(h)(2)(A), 125.208.²

¹ In the same filing, the Agency also recommends that the Board certify as pollution control facilities other specified facilities at Dare Farms’ cattle operation. The Board certifies these other facilities as pollution control facilities by separate order today in this docket.

² Any questions about filing the record in an electronic format should be directed to the Clerk’s Office at (312) 814-3620 or (312) 814-3461.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 16, 2020 by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board