

ILLINOIS POLLUTION CONTROL BOARD
June 3, 2021

RACCOON CREEK FARM, LLC)	
)	
Petitioner,)	
)	
v.)	PCB 21-85
)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On March 26, 2021, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board deny certification of specified facilities of Raccoon Creek Farm, LLC (Raccoon Creek Farm) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 et seq. (2018); 35 Ill. Adm. Code 125.1. Raccoon Creek Farm’s facilities are located at 8761 4th Road in Summer, Lawrence County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and denies tax certification for Raccoon Creek Farm’s facilities.

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 (2018); *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 (2018); *see also* 35 Ill. Adm. Code 125.200(a). Under the statute, the Board determines if the facilities are pollution control facilities; however, the Board is not authorized to assess a value of those facilities.

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 (2018); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Raccoon Creek Farm on January 4, 2018, which Raccoon Creek Farm supplemented on October 13, 2020. Rec. at 1. On March 26, 2021 the Agency filed a recommendation with the Board, attaching Raccoon Creek Farm's application (Rec. Exh. A). The Agency's recommendation identifies the facilities at issue:

Six identical buildings (approximately 500 ft. x 60 ft. each with 3 ft. concrete wall around the parameter). Flocks of turkeys grown inside the buildings with manure accumulated and stored during the same period. Rec. at 1.

The Agency recommends that the Board deny certification of Raccoon Creek Farm's facilities. Rec. at 2. The Agency states that these facilities do not have the primary purpose of eliminating, preventing, or reducing water pollution, or as otherwise provided in 35 Ill. Adm. Code 125.200, and are not eligible for tax certification by the Board. *Id.* (emphasis in original) (quoting 35 ILCS 200/11-10(b)(3) (2018)). IEPA concluded that "[t]he primary purpose of these facilities is to provide an area that protects animals from predators, shelters animals from outside weather conditions, reduces theft and is not pollution control." Rec. at 2.

In an order on April 15, 2021, the Board noted IEPA's recommendation to deny certification. To contest the recommendation, Raccoon Creek Farms was required to file a petition with the Board's Clerk within 35 days after the Agency served the recommendation. *See* 35 Ill. Adm. Code 125.206(a). The Board stated that, "[i]f Raccoon Creek fails to timely file a petition, the Board may deny tax certification for the turkey housing and manure storage facility based on the Agency's recommendation." Raccoon Creek Farm has failed to timely file a petition to contest the Agency's recommended denial. *See* 35 Ill. Adm. Code 125.206(a).

CONCLUSION

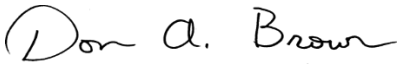
Based upon the Agency's recommendation, Raccoon Creek Farm's application, and the Board's technical review, the Board denies tax certification for Raccoon Creek Farm's facilities identified in this order under the Property Tax Code (35 ILCS 200/11-10 (2018)).

IT IS SO ORDERED.

Section 11-60 of the Property Tax Code provides that 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 Board's finding and order to the Circuit Court under the Administrative Review Law (735 ILCS 5/3-101 et seq. (2018)). *See* 35 ILCS 200/11-60 (2018). Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
Raccoon Creek Farm, LLC Zachary Buchanan 9732 Billet Lane Lawrenceville, Il, 62439 Lazybfarm@gmail.com	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 don.brown@illinois.gov
Illinois Environmental Protection Agency Amanda S. Kimmel 1021 North Grand Avenue East P.O. Box 19276 Springfield, Il, 62794 Amanda.Kimmel@illinois.gov	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 3, 2021, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board