

ILLINOIS POLLUTION CONTROL BOARD

November 20, 2014

CURT STRODE (Property Identification	)	
Number 06-05-34-300-001)	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 15-81
	)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by D. Glosser):

On November 24, 2014, the Illinois Environmental Protection Agency (Agency) filed a recommendation as to whether the Board should certify certain facilities of Curt Strode as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2012); 35 Ill. Adm. Code 125. Curt Strode’s livestock waste management facility is located 24324 N. County Highway 15, Marietta, Fulton County. The Agency recommends that the Board issue a tax certificate for Curt Strode’s identified manure pits, but deny a tax certificate for the portions of the buildings above the manure pits. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Curt Strode’s identified manure pits are pollution control facilities.

The Board does not make a determination regarding the portions of the buildings above the manure pits. If Curt Strode wishes to contest the Agency’s recommendation regarding the the building above the manure pit, Curt Strode must file a petition to contest with the Clerk within 35 days after the Agency served the recommendation on Curt Strode. *See* 35 Ill. Adm. Code 125.206(a). If Curt Strode fails to timely file a petition, the Board may deny tax certification for the portions of the buildings above the manure pits, based solely on the Agency’s recommendation.

**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 (2012); *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 (2012); *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 (2012); *see also* 35 Ill. Adm. Code 125.216(a).

### **AGENCY RECOMMENDATION**

The Agency states that it received a tax certification application from Curt Strode on October 2, 2013 and March 21, 2014.<sup>1</sup> *Rec. at 1.* On October 24, 2014, the Agency filed a recommendation with the Board, attaching Curt Strode's application (*Rec. Exh. A*). The Agency's recommendation identifies the facility at issue:

one concrete manure storage area (approximately 66 ft. x 25 ft. x 8 ft. high walls) and the roof above the manure storage area in Barn # 1; one concrete manure pit (approximately 198 ft. x 46 ft. x 10 ft. deep) with the slotted concrete portion of the floor over the manure pit in Barn #2; ten concrete composting bins (each approximately 14 ft. x 14 ft. x 6 ft. high walls), roofing above the composting bins in Building #3 and an approximately 146 ft. x 20 ft. concrete apron to prevent runoff from the compost area. *Rec. at 1.*

The Agency further describes the facilities as being "used to collect, transport and/or store livestock waste prior to cropland application." *Id. at 2.*

The Agency recommends that the Board certify that the manure pits are a pollution control facility as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2012)) with the primary purpose of eliminating, preventing, or reducing water pollution. *Rec. at 2.*

### **TAX CERTIFICATE**

Based upon the Agency's recommendation, Curt Strode's application, and the Board's technical review, the Board finds and certifies that Curt Strode's manure pits identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2012)). The Board makes no finding regarding the assessed value of that facility. Under Section 11-25 of the Property Tax Code, the effective date of this certificate 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 (2012); *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)

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<sup>1</sup> The Agency's recommendation is cited as "*Rec. at 1.*"

(quoting in italics 35 ILCS 200/11-30 (2012)). The Clerk therefore will provide Curt Strode and the Agency with a copy of this order.

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.* (2012)). *See* 35 ILCS 200/11-60 (2012).

IT IS SO ORDERED.

I I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 20, 2014 by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault", with a stylized flourish at the end.

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John T. Therriault, Clerk  
Illinois Pollution Control Board