

ILLINOIS POLLUTION CONTROL BOARD
January 23, 2014

WRB REFINING, LLC (Storage Tank)	
Upgrades) (Parcel No. 19-1-08-35-00-000-)	
001),)	
)	
Petitioner,)	
)	
v.)	PCB 14-84
)	(Tax Certification - Air)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (D. Glosser):

On December 12, 2013, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of WRB Refining, LLC (WRB) 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. The facilities are associated with WRB’s Wood River petroleum refinery located at 900 South Central Avenue in Roxana, Madison County. In this order, the Board describes the legal framework for tax certifications, and discusses the Agency’s recommendation. Next the Board explains its reasons for certifying certain of WRB’s Storage Tank Upgrades as pollution control facilities, while denying certification for fire protection systems. The Board will allow WRB to file a request for hearing on the Board’s denial before the Board issues its final order regarding that equipment.

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). However, “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.” 35 ILCS 200/11-30 (2012).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from WRB on or about October 14, 2010.¹ Rec. at ¶ 1. The Agency further states that on or about November 14, 2011, it received “[a] revised application . . ., clarifying cost information and emphasizing that project costs reflected upgrades to tanks, not costs for new or replacement tanks.” *Id.* On December 12, 2013, the Agency filed a recommendation with the Board, attaching WRB’s later application (Rec. Exh. A). The Agency’s recommendation identifies the facilities at issue:

The subject matter of this request consists of a Storage Tank Upgrades project, which undertook modifications to several petroleum storage tanks operating at the refinery. As described in the application materials, the tank upgrades included construction and installation of “new internal floating roof seals” and “new conservation vents.” These improvements were designed to prevent vapor emissions (*i.e.*, volatile organic materials) due to leakage and/or evaporation. The project also included “replacement of valves and flange gaskets” needed to comply with Leak Detection and Repair (LDAR) emission requirements under federal environmental regulations. Lastly, the upgrades included the installation of “new foam fire protection systems” to fight tank fires. Rec. at ¶ 4 (quoting Rec. Exh. A; citations omitted); *see also* Rec. Exh. A, Section D (“new foam fire protection systems to quickly extinguish tank fires which could cause air emissions”).

The Agency further describes the facilities: “By virtue that the tank improvements were primarily designed to address air emission impacts and/or regulatory compliance, the project acted to prevent or reduce contaminants that would otherwise be emitted to the atmosphere.” Rec. at ¶ 4.

The Agency recommends that the Board certify that the Storage Tank Upgrades are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2012)) with the primary purpose “to prevent, eliminate or reduce air pollution.” Rec. at ¶¶ 7, 8; *see also* Rec. Exh. B (Agency technical memorandum).

TAX CERTIFICATE

Based upon the Agency’s recommendation, WRB’s application, and the Board’s technical review, the Board finds and certifies that WRB’s Storage Tank Upgrades consisting of “new internal floating roof seals”, “new conservation vents”, and “replacement of valves and flange gaskets” are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2012)). However, WRB’s Storage Tank Upgrades consisting of “new foam fire protection

¹ The Agency’s recommendation is cited as “Rec. at _.”

systems” are not certified as pollution control facilities, because the Board is unconvinced, based on the materials in this record, that fire protection systems are pollution control facilities. Pursuant to Section 11-30 of the Property Tax Code (35 ILCS 200/11-30 (2012)), the Board will allow WRB to file a request for hearing or to supplement the record with the Clerk of the Board by February 27, 2014. If the Board does not receive additional information or a request for hearing, the Board will enter a final order denying certification of the “new foam fire protection systems” as a pollution control facility.

The Board makes no finding regarding the assessed value of those facilities. 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) (quoting in italics 35 ILCS 200/11-30 (2012)). The Clerk therefore will provide WRB and the Agency with a copy of this order.

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

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 23, 2014, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board