

ILLINOIS POLLUTION CONTROL BOARD  
February 4, 2016

O'LEARY FARMS – VIOLA	)	
(Property Identification Number	)	
11-11-21-300-005)	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 16-77
	)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (G.M. Keenan):

On January 20, 2016, the Illinois Environmental Protection Agency (Agency) filed a recommendation (Rec.) that the Board certify O'Leary Farms, owned by James O'Leary, as a "pollution control facility" for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2014); 35 Ill. Adm. Code 125. James O'Leary's hog operation is located at 817 240th Street in Viola, Mercer County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency's recommendation, and certifies that O'Leary Farms' livestock waste management facility is a pollution control facility.

**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 (2014); *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 (2014); *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 (2014); *see also* 35 Ill. Adm. Code 125.216(a).

**AGENCY RECOMMENDATION**

The Agency states that it received a tax certification application from O’Leary Farms on July 20, 2015. Rec. at 1. On January 20, 2016, the Agency filed a recommendation with the Board, attaching O’Leary Farms’ application (Rec. Exh. A). The Agency’s recommendation identifies the facility at issue:

Livestock waste management facilities consisting of one concrete manure pit (approximately 257 ft. x 52 ft. x 8 ft.), a PVC perimeter foundation drain (4 in. diameter by approximately 678ft. in length), with slotted floors over the pit. *Id.*

The Agency recommends that the Board certify that the livestock waste management facility is a pollution control facility as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2014)) with the primary purpose “to collect, transport and/or store livestock wastes prior to cropland application, and are further described in Exhibit A.” Rec. at 1.

**TAX CERTIFICATE**

Based upon the Agency’s recommendation, O’Leary Farms’ application, and the Board’s technical review, the Board finds and certifies that O’Leary Farms’ livestock waste management facility identified in this order is a pollution control facility under the Property Tax Code (35 ILCS 200/11-10 (2014)). 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 (2014); *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 (2014)). The Clerk therefore will provide O’Leary Farms and the Agency with a copy of this order.

IT IS SO ORDERED.

Member O’Leary Abstained

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.* (2014)). *See* 35 ILCS 200/11-60 (2014).

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 4, 2016, by a vote of 4-0.




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John T. Therriault, Clerk  
Illinois Pollution Control Board