

ILLINOIS POLLUTION CONTROL BOARD
May 26, 2022

FATHEREE PRODUCERS - XENIA)	
(Property Identification Number 09-16-300-)	
005),)	
)	
Petitioner,)	
)	
v.)	PCB 22-75
)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Van Wie):

On May 20, 2022, the Illinois Environmental Protection Agency (IEPA) filed a recommendation that the Board certify specified facilities of Fatheree Producers – Xenia (Fatheree) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2020); 35 Ill. Adm. Code 125. Fatheree’s livestock waste management facilities are located at 497 Penguin Drive in Xenia, Clay County. In this order, the Board describes the legal framework for tax certifications, discusses the IEPA’s recommendation, and certifies that Fatheree’s identified livestock waste management facilities are pollution control 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 (2020); *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 (2020); *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 IEPA. *See* 35 Ill. Adm. Code 125.202. If the IEPA receives a tax certification application, the IEPA 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 IEPA’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 (2020); *see also* 35 Ill. Adm. Code 125.216(a).

IEPA RECOMMENDATION

The IEPA states that it received a tax certification application from Fatheree on November 6, 2020.¹ Rec. at 1. On May 17, 2022, the IEPA filed a recommendation with the Board, attaching Fatheree’s application. The IEPA’s recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of one (1) concrete livestock waste pit measuring 341 ft. (length) x 101.66 ft. (width) x 8 ft. (depth) with 12 concrete pump out pits approximately 6 ft. (length) x 6 ft. (width) x 8 ft. (depth) and approximately 1,032 linear feet of 4 inch diameter HDPE perimeter drain tile and approximately 34,000 sq. ft. of concrete slatted flooring over this manure pit. *Id.*

The IEPA further describes the facilities as being “used to collect, transport, and/or store livestock waste prior to cropland application.” *Id.*

The IEPA recommends that the Board certify that the livestock waste management facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2020)) with the “primary purpose of eliminating, preventing, or reducing water pollution.” *Id.* at 2; *see also* Rec., IEPA Technical Memorandum.

TAX CERTIFICATE

Based upon the IEPA’s recommendation, Fatheree’s application, and the Board’s technical review, the Board finds and certifies that Fatheree’s livestock waste management facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2020)). 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, whichever is later.” 35 ILCS 200/11-25 (2020); *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 IEPA 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 (2020)). The Clerk therefore will provide Fatheree and the IEPA 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.* (2020)). *See* 35 ILCS 200/11-60 (2020). 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.

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

Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court	
Parties	Board
Fatheree Producers Attn.: Dwight Fatheree 2448 Redwood Lane Xenia, IL 62899	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 Attn: Amanda S. Kimmel 1021 North Grand Avenue East Springfield, IL 62794-9276 Amanda.Kimmel@illinois.gov	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 26, 2022, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board