

ILLINOIS POLLUTION CONTROL BOARD  
March 7, 2024

CONSERV FS, INC. - Caledonia (Property )  
Identification Number 02-023-200-001), )  
 )  
Petitioner, )  
 )  
v. ) PCB 24-46  
 ) (Tax Certification - Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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

On March 4, 2024, the Illinois Environmental Protection Agency (Agency) filed a amended recommendation that the Board certify specified facilities of Conserv FS, Inc. (Conserv FS) as “pollution control facilities” for preferential tax treatment under the Property Tax Code.<sup>1</sup> See 35 ILCS 200/11-5 *et seq.* (2022); 35 Ill. Adm. Code 125. Conserv FS’s agrichemical containment structures are located at 14937 Illinois Route 76 in Caledonia, Boone County. Accompanying the amended recommendation was a motion for leave to file *instanter*, which the Board grants.

In this order, the Board first describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that specified agrichemical containment structures of Conserv FS 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 (2022); *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 (2022); *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

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<sup>1</sup> In an order on January 18, 2024, the Board noted that the description of Conserv FS’s facilities in the Agency’s original recommendation was not entirely consistent with information in Conserv FS’s application to the Agency for certification. The Board directed the Agency to file an amended recommendation addressing the apparent inconsistencies by Tuesday, February 20, 2024.

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 (2022); *see also* 35 Ill. Adm. Code 125.216(a).

### **AGENCY RECOMMENDATION**

The Agency stated that it received a tax certification application from Conserv FS on December 12, 2022. On March 4, 2024, the Agency filed its amended recommendation (Rec.) with the Board, attaching Conserv FS’s application (Rec. Exh. A). The Agency’s recommendation identified the facilities at issue:

[a] concrete liquid agrichemical operational containment structure [OC-1] measuring approximately 57 ft. (length) x 61.83 ft. (width) x 0.33 ft. (height) and the portion of the building over this operational containment structure.

A concrete liquid agrichemical operational containment structure [OC-2] measuring approximately 31 ft. (length) x 62.66 ft. (width) x 0.33 ft. (height) and the portion of the building over this operational containment structure.

A concrete liquid agrichemical operational containment structure [OC-3] measuring approximately 28 ft. (length) x 80 ft. (width) x 0.33 ft. (height) and the portion of the building over this operational containment structure.

A concrete liquid agrichemical secondary containment structure [SC-1] measuring approximately 28.42 ft. (length) x 69.33 ft. (width) x 0.833 ft. (height) and the portion of the building over this secondary containment structure.

A concrete liquid agrichemical secondary containment structure [SC-2] measuring approximately 44 ft. (length) x 58 ft. (width) x 3.5 ft. (height).

A concrete liquid agrichemical secondary containment structure [SC-4] measuring approximately 50 ft. (length) x 32.5 ft. (width) x 0.5 ft. (height) and the additional 27 ft. (length) x 28 ft. (width) x 0.5 ft. (height) area for containment of liquid fertilizer and the portion of the building over this secondary containment structure.

A concrete liquid agrichemical secondary containment structure [SC-5] measuring approximately 50 ft. (length) x 80 ft. (width) x 0.5 ft. (height) and the portion of the building over this secondary containment structure.

One (1) synthetic membrane liner installed and operated within the mild steel bulk liquid fertilizer tank with storage capacity of 1,000,000 gallons.

A concrete bulk dry agrichemical operational containment structure for loader operations measuring approximately 178 ft. (length) x 36 ft. (width) and the portion of the building over this operational containment structure.

A concrete bulk dry agrichemical operational containment structure for mixing, blending and loading operations measuring approximately 178 ft. (length) x 49.4 ft. (width) and the portion of the building over this operational containment structure.

A concrete bulk dry agrichemical operational containment structure for tractor trailer unloading operations measuring approximately 80 ft. (length) x 22 ft. (width) and the portion of the building over this operational containment structure.

A concrete bulk dry agrichemical secondary containment structure measuring approximately 178 ft. (length) x 54 ft. (width) and the portion of the building over this operational containment structure. *Id.* at 1-2.

The Agency further described the facilities as being used to “collect, store, or prevent the comingling of precipitation with agrichemical rinsates, residues, or washwaters prior to reuse or disposal, as approved under the Agency endorsed Agrichemical Facility Permit No. 94123326 (Log No. 22053643 and 22053644 issued on October 17, 2023) and prevent stormwater runoff from agrichemical affected areas.” *Id.* at 2.

The Agency recommended that the Board certify that the agrichemical containment structures are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2022)) with the “primary purpose of eliminating, preventing, or reducing water pollution.” Rec. at 3; *see also* Rec. at 4-5, 6-10 (Agency memoranda).

### TAX CERTIFICATE

Based upon the Agency’s amended recommendation, Conserv FS’s application, and the Board’s technical review, the Board finds and certifies that Conserv FS’s agrichemical containment structures identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2022)). 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 (2022); *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), citing 35 ILCS 200/11-30 (2022)). The Clerk therefore will provide Conserv FS and the Agency with a copy of this order.

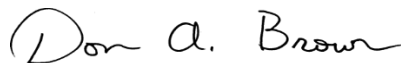
IT IS SO ORDERED.

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.* (2022)). See 35 ILCS 200/11-60 (2022). Within 35 days after receiving this final Board order, a party to this Board proceeding may file a motion asking the Board to reconsider or modify the order. 35 Ill. Adm. Code 101.520. Filing a motion to reconsider this final Board order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

<b>Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court</b>	
<b>Parties</b>	<b>Board</b>
Conserv FS - Caledonia Attn.: David Swigart 1110 McConnell Road Woodstock, Illinois 60098 <a href="mailto:dswigart@conservfs.com">dswigart@conservfs.com</a>	Illinois Pollution Control Board Attn.: Don A. Brown, Clerk 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 <a href="mailto:don.brown@illinois.gov">don.brown@illinois.gov</a>
Illinois Environmental Protection Agency Attn.: Joshua Leopold, Assistant Counsel 1021 North Grand Avenue East Springfield, Illinois 62794-9276	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 7, 2024, by a vote of 4-0.



Don A. Brown, Clerk  
 Illinois Pollution Control Board