

ILLINOIS POLLUTION CONTROL BOARD
August 11, 2022

KH POPPY FARMS (Property Identification)
Number 17-30-400-001),)
)
Petitioner,)
)
v.) PCB 23-24
) (Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (By A. Palivos):

On August 4, 2022, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify a specified facility of KH Poppy Farms – Lynn Center (Poppy) 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. Poppy’s livestock facility is located at 6634 700th Avenue, Lynn Center, Henry County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Poppy’s identified livestock waste handling 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 (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 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 (2020); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Poppy on December 6, 2021.¹ Rec. at 1. On August 4, 2022, the Agency filed a recommendation with the Board, attaching Poppy's application (Rec. Exh. A). The Agency's recommendation identifies the facility at issue:

Livestock waste management facilities consisting of two (2) concrete livestock waste pits, each measuring 203 ft. (length) x 52 ft. (width) x 8 ft. (depth) and having 5 concrete pump out pits measuring approximately 6 ft. (length) x 5 ft. (width) x 8 ft. (depth), seventy-two (72) 1 ft. (dia) x 7 ft. (height) reinforced concrete columns supporting sixty-eight (68) 12 ft. (length) reinforced concrete beams and two-hundred-sixty-four (264) 10 ft. (length) x 4 ft. (width) concrete gang slats (flooring) and approximately 560 linear feet of 4 inch diameter drain tile around the perimeter of the waste pits. *Id.* at 1.

The Agency recommends that the Board certify that the livestock waste handling facility is a pollution control facility 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." Rec. at 2; *see also* Rec., Agency Technical Memorandum.

TAX CERTIFICATE

Based upon the Agency's recommendation, Poppy's application, and the Board's technical review, the Board finds and certifies that Poppy's livestock waste handling facility identified in this order is a pollution control facility 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, which ever 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 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 (2020)). The Clerk therefore will provide Poppy and the Agency with a copy of this order.

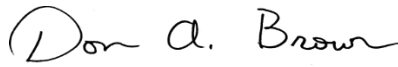
IT IS SO ORDERED.

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.* (2020)). *See* 35 ILCS 200/11-60 (2020). 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.

¹ The Agency's recommendation is cited as "Rec. at _."

Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court	
Parties	Board
Keith Poppy 6631 N. 750 th Avenue Lynn Center, IL 61262	Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 E. Van Buren St., Suite 630 Chicago, Illinois 60605
Grace McCarten Assistant Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, IL 62894-9276	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 11, 2022, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board