

ILLINOIS POLLUTION CONTROL BOARD  
July 20, 2023

DIEKEMPER PORK LLC (Property )  
Identification Number 07-07-03-200-002), )  
 )  
Petitioner, )  
 )  
v. ) PCB 24-001  
 ) (Tax Certification - Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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

On July 13, 2023, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify a specified facility of Diekemper Pork LLC (Diekemper) 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. Diekemper’s livestock facility is located at 16070 Varel Road, Carlyle, Clinton County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Diekemper’s identified 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 (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 Diekemper on November 16, 2022.<sup>1</sup> Rec. at 1. On July 13, 2023, the Agency filed a recommendation with the Board, attaching Diekemper’s application (Rec. Exh. A). The Agency’s recommendation identifies the facility at issue:

One (1) concrete livestock waste pit measuring 193 ft. (length) x 101.83 ft. (width) x 8 ft. (depth) with 6 concrete pump out pits approximately 6 ft. (length) x 6 ft. (width) x 6 ft. (depth) and approximately 19,653 sq. ft. of concrete slatted flooring over this manure pit. These livestock waste management facilities are used to collect, transport and/or store livestock waste prior to cropland application. *Id.* at 1.

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 (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, Diekemper’s application, and the Board’s technical review, the Board finds and certifies that Diekemper’s livestock waste management 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 Diekemper 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.

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<sup>1</sup> The Agency’s recommendation is cited as “Rec. at \_.”

<b>Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court</b>	
<b>Parties</b>	<b>Board</b>
Diekemper Pork LLC 17929 Flat Branch Road Carlyle, IL 62231 <a href="mailto:jasdiekemper@gmail.com">jasdiekemper@gmail.com</a>	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 July 20, 2023, by a vote of 3-0.



Don A. Brown, Clerk  
 Illinois Pollution Control Board