

ILLINOIS POLLUTION CONTROL BOARD
October 5, 2023

CONSERV FS, INC.,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 24-23
ILLINOIS ENVIRONMENTAL)	(Tax Certification - Water)
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (M.D. Mankowski):

On September 27, 2023, the Illinois Environmental Protection Agency (Agency) filed a recommendation (Rec.) that the Board certify specified facilities of Conserv FS, Inc. (Conserv) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2022); 35 Ill. Adm. Code 125. Conserv’s facility is located at 450 West Adams in Waterman, DeKalb County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Conserv’s identified fertilizer and agrichemical storage 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 (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 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 states that it received a tax certification application from Conserv on December 12, 2022.¹ Rec. at 1. On September 27, 2023, the Agency filed a recommendation with the Board, attaching Conserv's application (Rec. Exh. A). The Agency's recommendation identifies the facilities at issue:

A concrete liquid agrichemical operational containment structure [OC-1] measuring approximately 80 ft. (length) x 28 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 86.33 ft. (length) x 57 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 62.67 ft. (length) x 31 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 50 ft. (length) x 32 ft. (width) x 0.5 ft. (height) with additional area measuring approximately [SC-1] measuring approximately 28 ft. (length) x 27 ft. (width) x 0.5 ft. (height) and the portion of the building over this secondary containment structure.

A concrete liquid agrichemical secondary containment structure [SC-2] measuring approximately 80 ft. (length) x 50 ft. (width) x 0.5 ft. (height) and the portion of the building over this secondary containment structure.

A concrete liquid agrichemical secondary containment structure [SC-3] measuring approximately 69.33 ft. (length) x 28.5 ft. (width) x 0.83 ft. (height) and the portion of the building over this secondary containment structure.

A concrete liquid agrichemical secondary containment structure [SC-4] measuring approximately 58 ft. (length) x 44 ft. (width) x 3.5 ft. (height) and the portion of the building over this secondary containment structure.

A concrete bulk dry agrichemical operational containment structure for loader operations measuring approximately 178 ft. (length) x 32 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 148 ft. (length) x 16 ft. (width) and the portion of the building over this operational containment structure.

¹ While the Agency's recommendation refers to a revised request dated September 20, 2020, it does not include information matching that description or date.

A concrete bulk dry agrichemical operational containment structure for transportation and application equipment loading operations measuring approximately 120 ft. (length) x 24.5 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 60 ft. (length) x 24 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 70 ft. (width) and the portion of the building over this secondary containment structure. *Id.* at 1-2.

The Agency further describes 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. 92101687 (Log No. 21033347 issued on December 9, 2022) and prevent stormwater runoff from agrichemical affected areas.” *Id.* at 2.

The Agency recommends that the Board certify that these fertilizer and agrichemical storage facilities 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. Exh. A (Agency memorandum).

TAX CERTIFICATE

Based upon the Agency’s recommendation, Conserv’s application, and the Board’s technical review, the Board finds and certifies that Conserv’s fertilizer and agrichemical storage facilities 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) (quoting in italics 35 ILCS 200/11-30 (2022)). The Clerk therefore will provide Conserv and the Agency with a copy of this order.

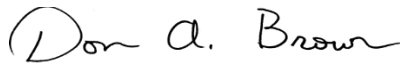
IT IS SO ORDERED.

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.

Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court	
Parties	Board
Conserv FS, Inc Attn.: David Swigart 1110 McConnell Road Woodstock, Illinois 60098 dswigart@conservfs.com	Illinois Pollution Control Board Attn.: Don A. Brown, Clerk 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 don.brown@illinois.gov
Illinois Environmental Protection Agency Attn.: Joshua Leopold, Asst. Counsel 1021 North Grand Avenue East PO Box 19276 Springfield, Illinois 62794-9276	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 5, 2023, by a vote of 4-0.



Don A. Brown, Clerk
 Illinois Pollution Control Board