

ILLINOIS POLLUTION CONTROL BOARD
February 6, 2003

NEW DOMINION FARMS OF ILLINOIS,)
INC. (Property Identification Numbers 03-029-)
001-00; 03-029-004-00; 03-028-016-00; 03-)
029-003-00),)
)
Petitioner,)
)
v.) PCB 03-111
) (Tax Certification)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

On January 24, 2003, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of New Dominion Farms of Illinois, Inc. (New Dominion) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. 35 ILCS 200/11-5 *et seq.* (2002). The Agency filed the recommendation under Part 125 of the Board’s procedural rules. 35 Ill. Adm. Code 125. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that New Dominion’s 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 (2002); *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 (2002); *see also* 35 Ill. Adm. Code 125.200(a).

Under Section 125.202 of the Board’s procedural rules, a person may submit an application for tax certification to the Agency. 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. 35 Ill. Adm. Code 125.204(a). Among other things, the Agency’s filing must recommend that the Board issue or deny tax certification. 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 (2002); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from New Dominion on August 12, 2002. Agency Recommendation (Agency Rec.) at 1. On January 24, 2003], the Agency filed a recommendation on the application with the Board. The Agency's recommendation identifies the facilities at issue: water pollution control facilities. Agency Rec. at 2. The Agency's recommendation further describes the facilities:

12 concrete manure pits (139.8 ft. x 7.5 ft. x 2 ft.) overlain by concrete slotted floors and four concrete manure pits (140 ft. x 7.5 ft. x 2 ft.) overlain by concrete slotted floors in the breeding building;

12 concrete manure pits (139.8 ft. x 7.5 ft. x 2 ft.) overlain by concrete slotted floors and four concrete manure pits (140 ft. x 7.5 ft. x 2 ft.) in the gestation building;

64 concrete manure pits (67 ft. x 7.5 ft. x 1.33 ft.) overlain by a woven wire floor in the farrowing building;

16 concrete manure pits (40 ft x 9.5 ft. x 1.33 ft.) overlain by concrete slotted floors in the quarantine/isolation building;

loadout area concrete manure pit (70 ft. x 7 f. x 1.33 ft.);

pull plugs for the manure pits;

two earthen livestock lagoons lined with a synthetic membrane liner (561.5 ft. x 360 ft. x 20.27 ft. and 561.5 ft. x 410.5 ft. x 20.54 ft.);

approximately 3,135 feet of manure pipe (8 inch diameter PVC) to drain manure from the pits to the lagoons;

two drop manholes for transfer of manure from the pits to the lagoons;

a manure recycle pump (7.5 hp); manure piping between the lagoons (12 inch diameter x 155 ft.);

manure recycle piping (4 inch diameter x 1730 ft.);

irrigation/manure pump (1700 gallons per minute @ rated head) and appurtenances;

irrigation/manure pump (425 gallons per minute @ rated head) and appurtenances;

manure irrigation piping (PVC, 12 inch diameter x 1500 ft., 10 inch diameter x 4900 ft., 8 inch diameter x 1500 ft., 6 inch diameter x 5800 ft.), associated fittings, gate valves, caps, casings, tees, reducers, air release valves and other appurtenances;

two center pivot manure irrigation units; and a portable manure irrigation gan and associated hoses, fittings, reducers and cart; and

livestock buildings and the earthen pads under the livestock buildings. *Id.* at 1-2.

The Agency's recommendation also identifies the location of the facilities: Section 31, T3N, Range 3W of the 4th Principal Meridian, Schuyler County at Route 1, Box 21AA, Camden, Illinois. Agency Rec. at 1.

The Agency recommends that the Board certify that the identified facilities, except for the livestock buildings and the earthen pads under the livestock buildings, are pollution control facilities as defined in Section 11-10 of the Property Tax Code (Code) (35 ILCS 200/11-10 (2000)) because the primary purpose of the facilities is to "eliminat[e], prevent[], or reduc[e] water pollution, or as otherwise provided in 35 Ill. Adm. Code 125.200." Agency Rec. at 3. The Agency determined that the livestock buildings and the underlying earthen pads were not pollution control facilities according to Section 11-10 of the Code and, consequently, were not entitled to preferential tax treatment. *Id.*

TAX CERTIFICATE

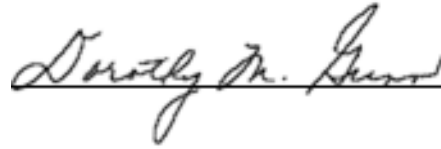
The Board finds and certifies that New Dominion's facilities, except for the livestock buildings and the earthen pads under the livestock buildings, identified in this order are pollution control facilities under the Property Tax Code. 35 ILCS 200/11-10 (2002). Under Section 11-25 of the Property Tax 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 (2000); *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 (2000)). The Clerk therefore will provide New Dominion and the Agency with a copy of this order.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final

orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 6, 2003, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board