

ILLINOIS POLLUTION CONTROL BOARD
February 3, 2005

BAY CREEK 2 INVESTMENTS, LLC)	
(Livestock Waste Management Facilities)	
(Property Identification Number)	
73-001-04A)),)	
)	
Petitioner,)	
)	
v.)	PCB 05-145
)	(Tax Certification - Water)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On January 28, 2005, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of Bay Creek 2 Investments, LLC (Bay Creek 2 Investments) as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2002)). The facilities are livestock waste management facilities at Bay Creek 2 Investments’ farrow-to-finish swine confinement facility in Nebo, Pike County. 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 Bay Creek 2 Investments’ 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 Bay Creek 2 Investments for its livestock waste management facilities at Bay Creek 2 Investments’ farrow-to-finish swine confinement facility on April 12, 2004. Agency Recommendation (Agency Rec.) at 1. On January 28, 2005, the Agency filed a recommendation on the application with the Board. The Agency’s recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of one concrete manure pit (41 ft. x 44 ft. x 8 ft. deep) with the slotted concrete portion of the floor over the manure pit and one pull-plug drain located in one swine isolation building; one concrete manure pit (79 ft. x 500 ft. x 10 ft. deep) with the slotted concrete portion of the floor over the manure pit and 12 concrete pump-out manure pits (each 6 ft. x 6 ft. x 10 ft. deep) located in one swine gestation building; one concrete manure pit (79 ft. x 272 ft. x 2 ft. deep) with the slotted concrete portion of the floor over the manure pit and one pull-plug drain located in one swine farrowing building; and approximately 100 ft. of 10-inch diameter PVC manure transfer pipe. Agency Rec. at 1.

The Agency’s recommendation also identifies the location of the facilities: Section 3, Tract 7 South, Range 3 West of the Fourth Principal Meridian, in Pike County. *Id.* at 1.

The Agency recommends that the Board certify that the identified facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2002)) because the primary purpose of the facilities is eliminating, preventing, or reducing water pollution. Agency Rec. at 2.

TAX CERTIFICATE

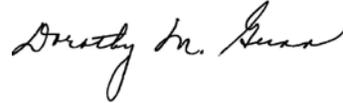
The Board finds and certifies that Bay Creek 2 Investments’ facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2002)). Under Section 11-25 of the Property Tax Code, the effective date of this certificate is “the date of application for the certificate or the date of the construction of the facility, which ever is later.” 35 ILCS 200/11-25 (2002); *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 (2002)). The Clerk therefore will provide Bay Creek 2 Investments 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 3, 2005, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board