

ILLINOIS POLLUTION CONTROL BOARD

July 22, 2004

AQUA ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 03-124
	)	(Tax Certification)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J.P. Novak):

On July 8, 2004, Aqua Illinois, Inc. (Aqua) and the Illinois Environmental Protection Agency (Agency) filed a Joint Motion to Enter Agreed Order accompanied by the proposed Agreed Order. In essence, the Board's order today accepts the parties' settlement of Aqua's appeal of the Agency's recommended denial of tax certification for specific "pollution control facilities" at Aqua's Danville public water supply. In this order, the Board first describes the legal framework for tax certifications, then traces the procedural history of this case, and then certifies that specified Aqua 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. The certificate shall require tax treatment as a pollution control facility, but only for the portion certified if only a portion is certified. The effective date of a certificate shall be the date of the application for the certificate or the date of the construction of the facility, whichever is later." 35 ILCS 200/11-25 (2002); *see also* 35 Ill. Adm. Code 125.216(a).

## **PROCEDURAL HISTORY**

The Agency states that it received a tax certification application from Aqua on November 7, 2002.<sup>1</sup> Agency Recommendation (Agency Rec.) at 1. Specifically, Aqua sought to certify as pollution control facilities the following: four upflow clarifiers; six rapid-rate gravity dual media filters; four ion exchange columns; one powdered activated carbon unit (collectively, the “Water Treatment Equipment”); three 3-million gallon sludge lagoons; one 4-million gallon settling basin; a wet well/storage basin for ion exchange backwash (collectively, the Residuals Treatment Equipment’); and various pipes, fittings, and appurtenances. Petition for Administrative Review (Pet.) at 1-2. On February 14, 2003, the Agency filed a recommendation on the application with the Board. The Agency’s recommendation identifies the facilities at issue and describes them as “used to treat raw water withdrawn from the North Fork River for use as a public (drinking) water supply.” Agency Rec. at 2. The Agency’s recommendation also identifies the location of the facilities at 1301 West Fairchild Street, Danville, Illinois. *Id.* at 1.

The Agency recommended that the Board deny the requested certification of the identified facilities as pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2000)) because the primary purpose of the facilities is “not the reduction of ‘water pollution’ as defined in the Environmental Protection Act, but rather the removal of contaminants from and processing of the raw water to make a product for sale, i.e. potable water.” Agency Rec. at 3.

On March 14, 2003, Aqua filed a Petition for Administrative Review contesting the Agency’s recommendation. The Board accepted the petition on March 20, 2003. Following discussions in which Aqua provided clarifying information on the facilities for which it sought tax certification (Amended Recommendation (Amended Rec.) at 1), the parties on December 4, 2003, filed a Joint Statement of Stipulated Facts (Stip.). Based in part on information contained in that joint stipulation, the Agency filed an Amended Recommendation concluding that the three 3-million gallon sludge lagoons and the single 4-million gallon settling basin may be considered “pollution control facilities” and that they are eligible for tax certification from the Board. Amended Rec. at 3. The Amended Recommendation concluded that the remaining facilities described in the application may not be considered “pollution control facilities” and thus are not eligible for tax certification from the Board. Amended Rec. at 3-4.

On July 8, 2004, the parties filed a Joint Motion to Enter Agreed Order accompanied by the proposed order. (Joint Motion). In discussions taking place after Aqua filed its Petition for Administrative Review, Aqua indicated that it would no longer contest the Agency’s recommended denial of certification for its upflow clarifiers or the rapid-rate gravity dual media filters. Joint Motion at 1-2. Furthermore, Aqua has learned that its nitrate removal facility, wet well/storage basin for ion exchange backwash, and powdered activated carbon unit are excluded from its tax base until 2010 under Illinois law regarding enterprise zones. Joint Motion at 2.

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<sup>1</sup> On June 17, 2004, the Board acknowledged notice that petitioner Consumers Illinois Water Company had changed its name to Aqua Illinois, Inc. and amended the caption. To reflect that change and to avoid confusion, this order will refer to the petitioner as Aqua Illinois, Inc. even with regard to occurrences preceding the name change and amended caption.

Consequently, Aqua states that it no longer wishes to pursue its petition for administrative review with regard to equipment for which the Agency has not recommended granting tax certification. *Id.*

Aqua and the Agency jointly request that the Board dismiss, without prejudice, Aqua's petition for administrative review with regard to its nitrate removal facility, wet well/storage basin for ion exchange backwash, powdered activated carbon unit, two 2-stage upflow clarifiers, and six rapid-rate gravity dual media filters, with leave to refile its application for tax certification in the future with regard to those facilities. Joint Motion at 3. The Board grants the motion as made. The Board certifies the sludge lagoons and settling basin below, as the parties request.

### TAX CERTIFICATE

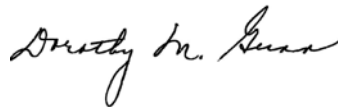
The Board finds and certifies that Aqua's three 3-million gallon sludge lagoons and Aqua's single 4-million gallon settling basin are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2000)). Under Section 11-25 of the Property Tax Code, the effective date of this certificate 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). Accordingly, the effective date of this certificate is November 7, 2002, the date of the application for the certificate, because the facilities were constructed before the application for certification. Joint Motion at 4.

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 Aqua 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) (2000); *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 July 22, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board