

ILLINOIS POLLUTION CONTROL BOARD

April 2, 2009

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| WESTERN CREEK FARMS, LLC – LaHarpe )         |                             |
| (Property Identification Number 05-24-300- ) |                             |
| 014), )                                      |                             |
| )  |                             |
| Petitioner, )                                |                             |
| )  |                             |
| v. )   | PCB 09-71                   |
| )  | (Tax Certification - Water) |
| ILLINOIS ENVIRONMENTAL )                     |                             |
| PROTECTION AGENCY, )                         |                             |
| )  |                             |
| Respondent. )                                |                             |

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

On March 30, 2009, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of Western Creek Farms, LLC - Laharpe (Western Creek) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2006); 35 Ill. Adm. Code 125. Western Creek’s livestock facility is located at 2431 E. State Highway 9 and 94 in LaHarpe, Hancock County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Western Creek’s manure management structures at its site 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 (2006); *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 (2006); *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. *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 (2006); *see also* 35 Ill. Adm. Code 125.216(a).

### **AGENCY RECOMMENDATION**

The Agency states that it received a tax certification application from Western Creek on December 28, 2007.<sup>1</sup> Rec. at 1. On March 30, 2009, 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 two concrete pits (each 101 ft. x 204 ft. x 8 ft. deep) with six concrete pump out pits (each 6 ft. x 6ft. x 8ft. deep) and the portion of the concrete slotted flooring over the manure pits. *Id.*

The Agency's recommendation further describes the facilities: "These livestock waste management facilities are used to collect, transport, and/or store livestock wastes prior to cropland application." Rec. at 1. The Agency's recommendation also identifies the location of the facilities: Section 24, T7N, R6W of the 4th P.M. in Hancock County. *Id.*

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 (2006)) because the primary purpose of the facilities is "eliminating, preventing, or reducing water pollution." Rec. at 2.

### **TAX CERTIFICATE**

Based on the Agency's recommendation, the Board finds and certifies that the facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2006)). 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 (2006); *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 (2006)). The Clerk therefore will provide Western Creek 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) (2006); *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.

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<sup>1</sup> The Agency's recommendation is cited as "Rec. at \_."

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 2, 2009, by a vote of 5-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board