

ILLINOIS POLLUTION CONTROL BOARD
January 5, 2012

CONSERV FS, INC. - WOODSTOCK)
(Property ID No. 13-09-306-003),)
)
Petitioner,)
)
v.) PCB 12-96
) (Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by T.A. Holbrook):

On December 30, 2011, the Illinois Environmental Protection Agency (Agency) filed a recommendation (Rec.) that the Board certify certain facilities of Conserv FS, Inc. - Woodstock (petitioner) as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2010)). These facilities are described as a concrete containment facility for bulk liquid storage tanks and a building with concrete containment for truck loading and unloading at petitioner’s operation located at 1110 McConnell Road, Woodstock, McHenry County. Rec. at 1. In the same filing, however, the Agency recommended denial of tax certification of eight bulk liquid storage tanks because their primary purpose “is to hold bulk liquids” and not primarily to eliminate, reduce, or prevent water pollution. *Id.* at 1-2. The Agency filed the recommendation under Part 125 of the Board’s procedural rules (35 Ill. Adm. Code 125).

In this order, the Board first describes the legal framework for tax certifications before discussing the Agency’s recommendation and certifying that petitioner’s concrete containment facilities are pollution control facilities. Because the time for petitioner to file an appeal of the Agency’s recommended denial has not passed, the Board reserves ruling on the request for certification of the bulk liquid storage tanks.

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 (2010); 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 (2010); *see* 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 (2010); *see* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from petitioner for its facility on December 15, 2010. Rec. at 1. On December 30, 2011, the Agency filed a recommendation on the application with the Board. The Agency's recommendation identifies the facilities at issue:

A concrete containment facility for eight (8) bulk liquid storage tanks, and a 40' X 60' open-sided building with concrete containment for truck loading and unloading. *Id.*

Eight (8) bulk liquid storage tanks. *Id.* at 2.

The Agency's recommendation also identifies the location of the facilities: Section 9, T44N, R7E of the 3rd P.M., Dorr Township, McHenry County. *Id.*; *see id.*, Attachment A (Agency Memorandum)

The Agency makes separate recommendations relating to the two separate sets of facilities:

Concrete containment facilities: The Agency recommends that the Board certify that the concrete containment facility for eight bulk storage tanks and the building with concrete containment for truck loading and unloading are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2010)) because their primary purpose is eliminating, preventing, or reducing water pollution. Rec. at 1-2.

Bulk liquid storage tanks: The Agency recommends that the Board deny certification that the eight bulk liquid storage tanks are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2010)). Agency Rec. at 2-3. The Agency's recommendation states that the primary purpose of the tanks "is to hold bulk liquids" and not primarily to eliminate, reduce, or prevent water pollution. *Id.* at 2-3.

Petitioner has 35 days from when it was served with a copy of the Agency's recommendation to contest that recommendation to the Board. 35 Ill. Adm. Code 125.206. Section 125.206(a) of the Board's procedural rules provides that any petition to contest the recommendation must specify both "the grounds for contesting the Agency's recommendation" and "the date on which the Agency served the applicant under Section 125.204(c). . . . 35 Ill. Adm. Code 125.206(a). In addition, "[t]he applicant must serve the Agency with a copy of any petition to contest. . . . 35 Ill. Adm. Code 125.206(b).

As the time for the petitioner to file an appeal has not yet run, the Board reserves ruling on the recommendation to deny certification of the eight bulk liquid storage tanks as pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2010)) until the appeal time has expired.

TAX CERTIFICATE

The Board finds and certifies that petitioner's concrete containment facilities, as identified in this order, are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2010)). 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 (2010); *see* 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); *see* 35 ILCS 200/11-30 (2010)). The Clerk therefore will provide petitioner and the Agency with a copy of this order.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 5, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board