

ILLINOIS POLLUTION CONTROL BOARD
July 25, 2019

JEFF & SHEILA KOESTER (Property)	
Identification Number 08-000-005-00),)	
)	
Petitioners,)	
)	
v.)	PCB 19-98
)	(Tax Certification – Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by B. F. Currie):

On May 7, 2019, the Illinois Environmental Protection Agency (the Agency) filed an amended recommendation (Amended Rec.) that the Board certify certain facilities of Jeff & Sheila Koester (Koesters) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2016); 35 Ill. Adm. Code 125. The Agency’s recommendation also recommended not certifying other facilities as pollution control facilities. The Koesters’ livestock facility is located at 5405 North Mill Creek Road in Scales Mound, Jo Daviess County. On May 30, 2019, the Board entered an order granting the Koesters 35 days from service of the amended recommendation to contest the Agency’s recommendation to not certify certain facilities as pollution control facilities. The Koesters failed to timely file a petition to contest the Agency’s recommended denial for certain facilities. *See* 35 Ill. Adm. Code 125.206(a).

In this order, the Board first describes the legal framework for tax certification, discusses the Agency’s recommendations, certifies certain facilities as recommended by the Agency, and denies other facilities based on the Agency’s amended recommendation.

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 (2016); *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 (2016); *see also* 35 Ill. Adm. Code 125.200(a). Under the statute, the Board determines whether the facilities are pollution control facilities; however, the Board is not authorized to assess a value of those facilities.

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 (2016); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATIONS

The Agency states that it received a tax certification application from the Koesters on March 20, 2018. Rec. at 1. The Koesters' original application requested certification only for the manure storage structure. Rec. Exh. A at 5 (Agency Review Notes). The original application "did not include a process/pollutant flow diagram," which the Agency requested on June 27, 2018. *Id.* at 4 (Agency memorandum). The Agency raised the possibility of seeking certification of other facilities "such as concrete scrape alleys and waste piping," but explained "that building walls and roof were not eligible." *Id.*

The Agency received supplemental information from the Koesters on December 24, 2018. Rec. Exh. A at 5, 6-8 (Application for Certification). The supplemental information described the facility as including "Concrete lined manures storage structure 100' x 100' x 8'10" D[;] Dairy Parlor & Utility Room 40' x 50' and Milk House 12' x 20'[;] Free Stall Barn 66' x 184'[; and] Outside Scrape Alley 40' x 40'". *Id.* at 7. The record indicates that the Agency contacted the Koesters to advise them that it could not approve certification of structures such as building walls and roofs. *Id.* at 5. The Agency review notes state that "it is understood these items were not requested." *Id.*

On April 11, 2019, the Agency filed a recommendation with the Board, attaching the Koesters' application. On April 30, 2019, through a hearing officer order, the Board ordered the Agency to file a revised recommendation addressing facilities the Agency failed to address in the first recommendation. On May 7, 2019, the Agency filed an amended recommendation. The Agency's amended recommendation identifies the following facilities as recommended facilities:

One reinforced concrete manure pit with greatest dimensions of 100 ft. (length) x 100 ft. (width) x 8.83 ft. (depth) with one interior reinforced concrete wall abutting and supporting a reinforced concrete ramp measuring approximately 71.5 ft. (length) x 16 ft (width) x 8.83 ft. (depth) used to facilitate solids removal from within the pit and with approximately 400 linear feet of 4 inch diameter perforated drain tile around the perimeter of the concrete manure pit.

The approximately 7,216 square feet of concrete scrape alley surface area located inside of the freestall barn and the holding pen and the outdoor scrape alley connecting the barn to the waste holding basin described above.

The entire length of 6" PVC underground piping used to convey liquid wastes from the milking parlor and the milk house and utility room to the waste holding basin described above. Amended Rec. at 1-2.

The Agency further describes these facilities as being used to collect livestock waste prior to cropland application. Amended Rec. Exh. A at 3 (Agency revised technical review notes). The Agency recommends that the Board certify these as pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2016)) with the “primary purpose of eliminating, preventing, or reducing water pollution.” Rec. at 3; *see also* Rec. Exh. A at 1-2 (Agency memorandum), 3-4 (Agency technical review notes).

The Agency also recommended denying tax certification for certain facilities, including “[t]he walls and roofs of the freestall barns and; [t]he solid concrete floors within the freestall barns.” Amended Rec. at 3-4. The Agency described the primary purpose of these facilities as “to provide an area for feeding animals, keeping animals clean, sheltering animals from outside weather conditions, reducing bedding needs and is not pollution control.” *Id.* at 4.

TAX CERTIFICATE

Based upon the Agency’s recommendation, the Koesters’ application, and the Board’s technical review, the Board finds and certifies that the Koesters’ facilities recommended for certification identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2016)). The Board makes no finding regarding the assessed value of those facilities. 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 (2016); *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 (2016)). The Clerk therefore will provide the Koesters and the Agency with a copy of this order.

IT IS SO ORDERED.

Section 11-60 of the Property Tax Code provides that any applicant or holder aggrieved by the issuance, refusal to issue, denial, revocation, modification or restriction of a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate may appeal the Board’s finding and order to the Circuit Court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (2016)). *See* 35 ILCS 200/11-60 (2016). Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court	
Parties	Board
Jeff & Sheila Koester 5405 N. Mill Creek Road Scales Mound, IL 61075 sheilakoester@gmail.com	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
Illinois Environmental Protection Agency Attn: Jacob H. Smith 1021 North Grand Avenue East P.O. Box 19726 Springfield, IL 62794-9276	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 25, 2019, by a vote of 5-0.



Don A. Brown, Clerk
 Illinois Pollution Control Board