

ILLINOIS POLLUTION CONTROL BOARD  
September 19, 2019

JOSHUA S. DRAKE (Property Identification )  
Number 16-31-200-006) )  
 )  
Petitioner, )  
 ) PCB 20-12  
v. ) (Tax Certification - Water)  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by A. Palivos):

On September 6, 2019, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of Joshua S. Drake as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2018); 35 Ill. Adm. Code 125. Mr. Drake’s livestock waste handling facilities are located at 881 North 700th Avenue in New Windsor, Henry County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Mr. Drake’s identified livestock waste handling 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 (2018); *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 (2018); *see also* 35 Ill. Adm. Code 125.200(a). Under the statute, the Board determines if 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 (2018); *see also* 35 Ill. Adm. Code 125.216(a).

### AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Joshua on February 13, 2018.<sup>1</sup> Rec. at 1. On September 6, 2019 the Agency filed a recommendation with the Board, attaching Mr. Drake’s application. The Agency’s recommendation identifies the facilities at issue:

Livestock waste handling facilities consisting of one concrete manure pit (approximately 391 ft. x 51 ft. x 8 ft. deep), the concrete slatted portion of the floor over the manure pit that captures and contains waste generated in the barn above, ten concrete pump out pits (each approximately 5 ft. x 6 ft. x 8 ft.) to allow manure removal from the manure pit, and a plastic perimeter drain pipe (approximately 884 ft. x 4 in.), around the footing of the manure pit to prevent flotation of the pit, which includes one inspection port (approximately 8 ft. x 12 in.). *Id.* at 1.

The Agency further describes the facilities as “used to collect, transport, and/or store livestock waste prior to cropland application, and are further described in Exhibit A.” *Id.* at 2.

The Agency recommends that the Board certify that the livestock waste handling facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2018)) with the “primary purpose of eliminating, preventing, or reducing water pollution.” Rec. at 2; *see also* Rec., Agency Technical Memorandum at 1.

### TAX CERTIFICATE

Based upon the Agency’s recommendation, Mr. Drake’s application, and the Board’s technical review, the Board finds and certifies that Mr. Drake’s livestock waste handling facilities are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2018)). 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, whichever is later.” 35 ILCS 200/11-25 (2018); *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 (2018)). The Clerk therefore will provide Mr. Drake 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.* (2018)). *See* 35 ILCS 200/11-60 (2018). Filing a motion asking that the Board

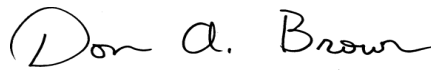
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<sup>1</sup> The Agency’s recommendation is cited as “Rec. at \_.”

reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

<b>Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court</b>	
<b>Parties</b>	<b>Board</b>
Joshua S. Drake 1446 Knoxville Road Lynn Center, Illinois 61262	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 Michael S. Roubitchek 1021 North Grand Avenue East Post Office Box 19276 Springfield, Illinois 62794-9276	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 19, 2019, by a vote of 4-0.



Don A. Brown, Clerk  
 Illinois Pollution Control Board