

ILLINOIS POLLUTION CONTROL BOARD
April 16, 2020

DARE FARMS LLP (Property Identification)
Number 09-08-13-100-001),)
)
Petitioner,)
)
v.) PCB 20-41
) (Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by C.M. Santos):

On January 7, 2020, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities at Dare Farms’ cattle operation 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. Dare Farms’ cattle operation is located at 27985 North Dare Road in Canton, Fulton County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Dare Farms’ identified 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 Dare Farms on July 30, 2018, which Dare Farms supplemented on September 25, 2018, November 7, 2019, and November 20, 2019.¹ Rec. at 1. On January 7, 2020, the Agency filed a recommendation with the Board, attaching Dare Farms' application. The Agency's recommendation identifies the facilities at issue:

One reinforced concrete manure pit measuring approximately 196 ft. x 48 ft. x 10 ft. deep, the precast concrete slatted flooring over the entire area of this pit and its supporting columns and precast beams, and approximately 500 ft of perforated plastic foundation drainage pipe. (Form-A-Drain) and approximately 150 ft. of 4-inch diameter plastic field tile;

One welded steel manure storage tank (Slurrystore) measuring approximately 101 ft. (diameter) x 23 ft. (height), with a center agitation system and side mount pump system;

One reinforced concrete livestock feedlot measuring 261 ft. x 105 ft., with 8-inch high perimeter curbing, a concrete ramp measuring 10 ft. x 12 ft. to convey feedlot runoff to a lidded reinforced concrete reception pit measuring 12 ft. x 42 ft. x 10 ft. deep, and having a fibrous waste cutter pump for manure transfer to the Slurrystore;

One concrete and wood frame four-bay animal composting shed measuring 18 ft. x 50 ft.;

The concrete curbing of varying thickness but measuring 4 ft. x 400 ft. found on the north and south sides of the 100 ft. x 200 ft. solid pack building used to maintain manure within that building. *Id.* at 3-4.²

The Agency recommends that the Board certify that these 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 3.

TAX CERTIFICATE

Based upon the Agency's recommendation, Dare Farms' application, and the Board's technical review, the Board finds and certifies that Dare Farms' facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2018)). The

¹ The Agency's recommendation is cited as "Rec. at _."

² In the same filing, the Agency also recommends that the Board not certify as pollution control facilities other specified facilities at Dare Farms' cattle operation. To contest the Agency's recommended denial of certification, Dare Farms filed an amended petition, which the Board accepts for hearing by separate order today in this docket.

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 (2018)). The Clerk therefore will provide Dare Farms 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 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
Froehling, Weber, Evans & Schell, LLP Attn: Ronald Weber 167 West Elm Street Canton, IL 61520 rweber@fwslawyers.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: Michael S. Roubitckek 1021 North Grand Avenue East P.O. Box 19276 Springfield, IL 62794 Mike.Roubitckek@Illinois.gov	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 16, 2020 by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board