

ILLINOIS POLLUTION CONTROL BOARD
June 17, 2021

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 May 26, 2021, the Illinois Environmental Protection Agency (IEPA) filed an amended recommendation to resolve a petition to contest filed by Dare Farms on March 20, 2020. IEPA recommends that the Board certify specified facilities of Dare Farms 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. IEPA also recommends that the Board deny certification of specified facilities.

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 IEPA’s amended recommendation, certifies that specified facilities of Dare Farms’ are pollution control facilities, and denies certification of specified 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 IEPA. *See* 35 Ill. Adm. Code 125.202. If IEPA receives a tax certification application, IEPA 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, IEPA’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).

ORIGINAL IEPA RECOMMENDATION

In its original recommendation filed on January 7, 2020 (Rec.), IEPA stated 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. Rec. at 1.

Original Recommendation to Certify

In its original recommendation, IEPA recommended that the Board certify the following facilities:

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.

On April 16, 2020, based on IEPA’s original recommendation, Dare Farm’s application, and its own technical review, the Board certified these facilities as pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2018)).

Original Recommendation to Deny Certification

IEPA’s original recommendation also recommended that the Board deny certification of the following facilities:

the covered feed storage building measuring 80 ft. x 150 ft;

the solid pack building with open front and back sides measuring 50 ft. x 96 ft.;

the cattle loafing building measuring 30 ft. x 72 ft.;

the cattle loafing building measuring 33 ft. x 108 ft.

the solid pack building measuring 100 ft. x 200 ft. except the portions of concrete curbing that are recommended for approval above.

To contest the recommendation to deny certification for these facilities, Dare Farms was required to file a petition to contest by February 18, 2020. In an order on February 20, 2020, the Board accepted a petition filed on February 13, 2020, as timely but directed Dare Farms to file an amended petition remedying specified deficiencies by March 23, 2020. On April 16, 2020, the Board accepted an amended petition filed on March 20, 2020. The Board's assigned hearing officer then held a number of status conferences with the parties.

AMENDED IEPA RECOMMENDATION

On May 26, 2021 IEPA filed its amended recommendation (Am. Rec.). IEPA reports that the parties "have reached a negotiated agreement to resolve the Petition to Contest and negate the need for a contested hearing." Am. Rec. at 6. IEPA also noted that the Board on April 16, 2020, had certified facilities specified in its original recommendation as pollution control facilities. *Id.* at 7-8.

Amended Recommendation to Certify

IEPA states that Dare Farms submitted supplemental information on August 6, 2020, and November 6, 2020. Am. Pet. at 6, citing *id.*, Exhibit A. IEPA now recommends that – in addition to the facilities certified on April 16, 2020 - the Board certify two facilities:

A covered feed storage building measuring 80 ft. x 150 ft, originally identified as the same in the Illinois EPA's January 7, 2020 initial Recommendation; [and]

A 20,000 square foot open sided pole building, measuring 100 ft. x 200 ft. with roof, original identified as the solid pack building in the Illinois EPA's January 7, 2020 initial Recommendation. Am. Pet. at 8.

Based on the information in the application and the purpose of the facilities, IEPA states that the two facilities listed above 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." Am. Rec. at 7, citing 35 Ill. Adm. Code 125.200(a).

Amended Recommendation to Deny Certification

IEPA's amended recommendation continues to recommend that the following facilities are not "pollution control facilities" and should be denied certification:

The solid pack building with open front and back sides measuring 50 ft. x 96 ft.;

The cattle loafing building measuring 30 ft. x 72 ft.; and

The cattle loafing building measuring 33 ft. x 108 ft. Am. Pet. at 9.

IEPA states that the parties agree as an element of their negotiated settlement that these three facilities "are not eligible for tax certification." Am. Rec. at 10 (emphasis in original). The Board's procedural rules provide that, after an IEPA recommendation to deny certification, Dare Farms "has 35 days after service of the recommendation to file a petition with the Board to contest the Agency recommendation." 35 Ill. Adm. Code 125.204(b); *see* Am. Rec. at 10.

However, after IEPA recommended denying certification of these three facilities on January 7, 2020, the Board accepted an amended petition to contest, which remains pending. IEPA's amended recommendation is the result of an agreement between the parties to resolve the petition. Am. Rec. at 1. Dare Farms "has indicated that it is prepared to dismiss its Petition to Contest" if the Board accepts the amended recommendation. *Id.* at 10. Based on this procedure and the substance of IEPA's amended recommendation, the Board denies certification of the three facilities specified above as "pollution control facilities."

TAX CERTIFICATE

Based upon the Agency's amended recommendation, Dare Farms' application, and the Board's technical review, the Board finds and certifies that Dare Farms' covered feed storage building and open sided pole building identified above in this order 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, which ever 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 Dare Farms and IEPA with a copy of this order.

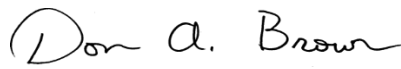
IT IS SO ORDERED.

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
Dare Farms LLP 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 don.brown@illinois.gov
Illinois Environmental Protection Agency Attn: Michael S. Roubitchek 1021 North Grand Avenue East P.O. Box 19276 Springfield, IL 62794 Mike.Roubitchek@Illinois.gov	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 17, 2021, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board