



North Carolina Department of Revenue

Michael F. Easley
Governor

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Secretary

December 13, 2006

Mr. Alan W. Klimek, P.E., Director
NC Division of Water Quality
NCDENR
1617 Mail Service Center
Raleigh, NC 27699-1617

Dear Mr. Klimek:

This letter is in regards to recent conversations between our offices concerning property receiving tax certification pursuant to G.S. 105-275(8)(a) and supersedes the January 30, 2000 letter on this issue from the Property Tax Division. Our offices have been discussing specifically the question: "Should land application sites that receive waste be certified, and if so, are there any limitations as to when land application sites should be certified?" G.S. 105-275(8)(a) exempts real and personal property that is used or, if under construction, is to be used exclusively for air cleaning or waste disposal or to abate, reduce, or prevent the pollution of air or water.

We realize that a land application site is often a requirement for a wastewater treatment plant permitted by the Division of Water Quality, and, as has been explained to us, a land application site is designed to remove pollutants from the waste that is applied to the land. This process includes applying the waste onto the site, growing a crop, and lastly, harvesting and removing the crop. Once the process is complete, the land application sites have accomplished their primary purpose, which is to remove pollutants from the waste.

Certification requirements for real or personal property require that the property: (1) be used exclusively for the abatement of pollution, (2) be installed or will be installed or constructed, (3) comply with the requirements of the Environmental Management Commission, (4) operate in accordance with the terms and conditions of the permit or other approved documents, and (5) have as its primary purpose, instead of incidental purpose, the abatement of pollution. If land application sites are required by the Division of Water Quality, are listed by either the permit or the application for the permit, and have as their primary purpose the reduction of the pollution in the waste, it is our opinion that land application sites and the equipment needed to support this operation meet the requirements for tax certification. The land application sites must still be used exclusively as a land application site (as any other use would cause it to lose its certification) and must comply with the requirements of the Division of Water Quality. The land deemed necessary for setback areas or buffer zones could also qualify if the permit required it, and if the land is used exclusively for that purpose. While it is our opinion that land used as land application sites may be certified if they meet the requirements under G.S. 105-275(8)(a), ultimately the Department of Environment and Natural Resources has the responsibility and authority to determine if land actually does meet the statutory requirements for tax certification.

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We do, however, find examples where land application sites should not be certified. These would include where the company producing the waste owns the land application site, but allows a farmer to tend and harvest the crop, or where the company applies the waste on land that a farmer owns and tends. In both of these situations the primary purpose is no longer pollution abatement, but instead the harvesting of a marketable crop by the farmer.

This opinion does not change how animal waste land application sites should be handled. G.S. 105-275(8)(a1) defines what can and cannot qualify in regards to animal waste management systems.

I hope this will be of assistance to you and your staff. Please feel free to call me with any questions regarding this issue at 919-733-7711.

Sincerely,

PROPERTY TAX DIVISION
David B. Baker, Director

Cc: Dennis R. Ramsey