

ILLINOIS POLLUTION CONTROL BOARD

October 2, 2014

JOHN AND ROSS SWORD (Property)	
Identification Number 01-05-200-001),)	
)	
Petitioners,)	
)	
v.)	PCB 15-68
)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (D. Glosser):

On September 8, 2014, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of John and Ross Sword (petitioners) as a “pollution control facility” for preferential tax treatment under the Property Tax Code. See 35 ILCS 200/11-5 et seq. (2012); 35 Ill. Adm. Code 125. Petitioners’ swine finishing facility is located at 25454 Straddle Creek Road, Lanark, Carroll County. The Agency recommends that the Board issue a tax certificate for petitioners’ identified manure pits, but deny a tax certificate for the portions of the buildings above the manure pits. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that petitioners’ identified manure pit is a pollution control facility.

The Board does not make a determination regarding the portions of the buildings above the manure pits. If petitioners wish to contest the Agency’s recommendation regarding the portions of the buildings above the manure pits, petitioners must file a petition to contest with the Clerk within 35 days after the Agency served the recommendation on petitioners. See 35 Ill. Adm. Code 125.206(a). If petitioners fail to timely file a petition, the Board may deny tax certification for the portions of the buildings above the manure pits based solely on the Agency’s 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 (2012); 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 (2012); 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 (2012); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from petitioners on May 10, 2013.¹ Rec. at 1. On September 8, 2014, the Agency filed a recommendation with the Board, attaching petitioners' application (Rec. Exh. A). The Agency's recommendation identifies the facility at issue:

Livestock waste management facilities consisting of one concrete manure pit (approximately 193 ft. x 51 ft. x 8 ft. deep) with 4 concrete manure pump out pits (approximately 6 ft. x 5 ft. x 8 ft. each) and the portion of concrete slotted flooring over the manure pit. *Id.*

The Agency further describes the facility as being "used to collect, transport and/or store livestock waste prior to cropland application." *Id.*

The Agency recommends that the Board certify that the facility is a pollution control facility as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2012)) with the primary purpose of eliminating, preventing, or reducing water pollution. Rec. at 3.

TAX CERTIFICATE

Based upon the Agency's recommendation, petitioners' application, and the Board's technical review, the Board finds and certifies that petitioners' facility identified in this order is a pollution control facility under the Property Tax Code (35 ILCS 200/11-10 (2012)). The Board makes no finding regarding the assessed value of the facility. 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 (2012); *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 (2012)). The Clerk therefore will provide petitioners 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

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

Board's finding and order to the Circuit Court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (2012)). *See* 35 ILCS 200/11-60 (2012).

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 2, 2014, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board