

ILLINOIS POLLUTION CONTROL BOARD

May 16, 2002

R. DEAN LOWER (Property Control )  
Numbers 06-000-236-00, 06-000-227-00), )  
 )  
Petitioner, )  
 )  
v. ) PCB 02-195  
 ) (Tax Certification)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by C.A. Manning):

On May 3, 2002, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of R. Dean Lower (Lower) as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2000)). The Agency filed the recommendation under Part 125 of the Board’s procedural rules (35 Ill. Adm. Code 125). In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Lower’s 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 (2000); *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 (2000); *see also* 35 Ill. Adm. Code 125.200(a).

Under Section 125.202 of the Board’s procedural rules, a person may submit an application for tax certification to the Agency. 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. 35 Ill. Adm. Code 125.204(a). Among other things, the Agency’s filing must recommend that the Board issue or deny tax certification. 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 (2000); *see also* 35 Ill. Adm. Code 125.216(a).

### AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Lower on March 15, 2001. Agency Recommendation (Agency Rec.) at 1. On May 3, 2002, the Agency filed a recommendation on the application with the Board. The Agency's recommendation identifies the facilities at issue:

Two concrete manure pits (each 6 ft. x 48 ft. x 3 ft. deep) with one manure drain pull plug per pit and the slotted wire and plastic portion of the flooring over the manure pits located in the farrowing house;

One concrete manure pit (10 ft. x 122 ft. x 8 ft. deep) and the slotted concrete portion of the flooring over the manure pit located in the old finishing barn;

One concrete manure pit (41 ft. x 152 ft. x 9 ft. deep) with two concrete manure pump-out boxes (each 5 ft. x 6 ft. x 10 ft. deep) and the slotted concrete portion of the flooring over the manure pit in the north finishing barn;

One concrete manure pit (41 ft. x 152 ft. x 9 ft. deep) with two concrete manure pump-out boxes (each 5 ft. x 6 ft. x 10 ft. deep) and the slotted concrete portion of the flooring over the manure pit in the south finishing barn;

Approximately 50 feet of 6-inch diameter clay tile manure transfer pipe;

One concrete manure pit (30 ft. x 72 ft. x 6 ft. deep) with two manure pump-out boxes (each 2.5 ft. x 6 ft. x 6 ft. deep) and the slotted concrete portion of the flooring over the manure pit located in the grower building;

Two concrete manure pits (each 8 ft. x 128 ft. x 8 ft. deep) with two concrete manure pump-out boxes (each 6 ft. x 6 ft. x 9 ft. deep) per pit and the slotted concrete portion of the flooring over the manure pits in the gestation building;

Two concrete manure pits (7 ft. x 80 ft. x 3 ft. deep) and the slotted plastic and cast iron concrete portion of the flooring over the manure pits in the farrowing house; and

One concrete manure pit (3 ft. x 80 ft. x 3 ft. deep) and the slotted plastic and cast iron portion of the flooring over the manure pit in the farrowing house.  
Agency Rec. at 1-2.

The Agency's recommendation also identifies the location of the facilities: Sections 17 and 18, Township 24N, Range 6E of the 4th Prime Meridian, 24444 Cyclone Ridge Road, Lanark, Carroll County. Agency Rec. at 1.

The Agency recommends that the Board certify that the identified facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2000)) because the primary purpose of the facilities is the elimination, prevention, or reduction of water pollution. Agency Rec. at 3.

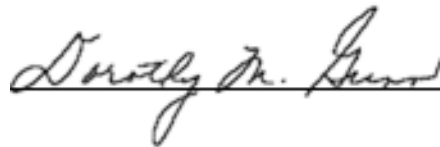
### TAX CERTIFICATE

The Board finds and certifies that Lower's facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2000)). 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 (2000); *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 (2000)). The Clerk therefore will provide Lower, the Agency, and the Department of Revenue with a copy of this order.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 16, 2002, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board