

ILLINOIS POLLUTION CONTROL BOARD
February 4, 2010

GERVASE BUEHNE - ST. ROSE (Property)
ID No. 01-01-28-200-001),)
)
Petitioner,)
)
v.) PCB 10-56
) (Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

On January 28 2010, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of Gervase Buehne - St. Rose (Gervase Buehne) as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2008))¹. The facilities are livestock waste manure management structures at petitioner’s dairy farm located at 8606 Main Street, Breese, Clinton County. But, in the same filing, the Agency recommended denial of tax certification to structures which “primary purpose is to provide an area to feed, keep the animals clean, shelter from outside weather conditions, reduce bedding needs and is not pollution control”. Agency Recommendation (Agency Rec.) at 3. 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 Gervase Buehne’s facilities are pollution control facilities. The Board grants certification to the livestock waste manure management. Further, as the time for Gervase Buehne to file an appeal of the Agency’s recommended denial has not passed, the Board reserves ruling on the request for the freestall barns and the solid concrete floors in the freestall barns.

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 (2008); *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 (2008); *see also* 35 Ill. Adm. Code 125.200(a).

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

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 (2008); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Gervase Buehne for its dairy farm on March 17, 2003.² Agency Rec. at 1. On January 28, 2010, the Agency filed a recommendation on the application with the Board. The Agency's recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of: two concrete manure pits (each approximately 256 ft. x 10 ft. x 8 ft. deep) with the slotted concrete portion of the floor over the manure pits; two concrete manure pits (each approximately 156 ft. x 8 ft. x 8 ft. deep) with the slotted concrete portion of the floor over the manure pits; one concrete manure pit (approximately 60 ft. x 30 ft. x 8 ft. deep) with the slotted concrete portion of the floor over the manure pit; one concrete manure pit (approximately 60 ft. x 16 ft. x 8 ft. deep) with concrete lid; one glass lined steel storage tank with a concrete floor for manure storage (approximately 123 ft. in diameter x 19 ft. deep) with one permanent PTO driven manure transfer pump; approximately 200 linear feet of 6-inch x 6-inch concrete curbing for facilitation of manure scraping to transport manure into manure pit; and approximately 700 feet of 6-inch diameter PVC manure transfer pipe and valves associated with said pipe.. *Id.* at 1

Additional facilities in this request include walls and roof of the freestall barns and the solid concrete floors in the freestall barns. *Id.* at 2.

The Agency's recommendation also identifies the location of the facilities: Section 28, T3N, R4W of the 3rd P.M., in Clinton County. *Id.*

The Agency makes separate recommendations relating to the two separate sets of facilities:

Livestock waste management facilities: 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 (2008)) because the primary purpose of the facilities is eliminating, preventing, or reducing water pollution. Agency Rec. at 3.

² The Agency's recommendation is cited as "Rec. at _."

Walls and roof of the freestall barns and the solid concrete floors in the freestall barns:

The Agency recommends that the Board deny certification that the identified facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2008)). Agency Rec. at 3. Petitioner has 35 days from when it was served with a copy of the Agency's recommendation to contest that recommendation to the Board. 35 Ill. Adm. Code 125.206. As the time for the petitioner to file an appeal has not yet run, the Board reserves ruling on the request to certify the walls and roof of the freestall barns and the solid concrete floors in the freestall barns as pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2008)) until the appeal time has expired.

TAX CERTIFICATE

The Board finds and certifies that Gervase Buehne's livestock waste management facilities, as identified in this order, are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2008)). 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 (2008); *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 (2008)). The Clerk therefore will provide Gervase Buehne and the Agency with a copy of this order.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 4, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board