

ILLINOIS POLLUTION CONTROL BOARD
February 2, 2017

MICHAEL BREIBY (Property Identification)
Number 10-10-02-100-004),)
)
Petitioner,)
)
v.) PCB 17-36
) (Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (C.M. Santos):

On January 4, 2017, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of Michael Breiby (petitioner) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2014); 35 Ill. Adm. Code 125. Petitioner’s livestock waste management facilities are located at 2015 120th Avenue in Aledo, Mercer County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that petitioner’s identified livestock waste management 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 (2014); *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 (2014); *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 (2014); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from petitioner on September 16, 2016.¹ Rec. at 1. On January 4, 2017, the Agency filed a recommendation with the Board, attaching petitioner's application (Rec. Exh. A). The Agency's recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of one concrete manure pit (approximately 54 ft. x 343 ft. x 10 ft. deep), a concrete slotted floor over the pit that collects livestock waste, and ten concrete livestock waste pump out pits to allow for waste removal (approximately 5 ft. x 6 ft. x 10 ft.). Rec. at 1.

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

The Agency recommends that the Board certify that the livestock waste management facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2014)) with the primary purpose "of eliminating, preventing, or reducing water pollution." Rec. at 2.

TAX CERTIFICATE

Based upon the Agency's recommendation, petitioner's application, and the Board's technical review, the Board finds and certifies that petitioner's livestock waste management facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2014)). 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, whichever is later." 35 ILCS 200/11-25 (2014); *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 (2014)). The Clerk therefore will provide petitioner 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 Board's finding and order to the Circuit Court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (2014)). *See* 35 ILCS 200/11-60 (2014).

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

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 2, 2017, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board