

ILLINOIS POLLUTION CONTROL BOARD
January 6, 2011

MERLIN MCCLURE - KIRKWOOD)
(Property Identification Number 02-013-005-)
05),)
)
Petitioner,)
)
v.) PCB 11-35
) (Tax Certification)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On December 29, 2010, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of Merlin McClure - Kirkwood (petitioner) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2008); 35 Ill. Adm. Code 125. Petitioner’s hog farm is located 540 160th Avenue, Kirkwood, Mercer County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that petitioner’s 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 (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).

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

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from petitioner on December 30, 2008.¹ Rec. at 1. On December 29, 2010, the Agency filed a recommendation on the application with the Board, accompanied by petitioner's application. The Agency's recommendation identifies the facilities at issue:

[l]ivestock waste management facilities consisting of one concrete manure pit (391 ft. x 51 ft. x 8 ft. deep), with 6 concrete pump out pits (approximately 5 ft. x 5 ft. x 8 ft. deep) and the portion of concrete slat floor over the manure pit in building #1; and one concrete manure pit (391 ft. x 51 ft. x 8 ft. deep), with 6 concrete pump out pits (approximately 5 ft. x 5 ft. x 8 ft. deep) and the portion of concrete slat floor over the manure pit in building #2. *Id.*

The Agency's recommendation further describes the facilities as "livestock waste management facilities [that] are used to collect, transport and/or store livestock wastes prior to cropland application. . . ." *Id.* The Agency's recommendation also identifies the location of the facilities: "Section 3, T13N, R3W of the 4th West P.M. in Mercer County" at 540 160th Avenue, Kirkwood. *Id.*

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." Rec. at 2-3.

TAX CERTIFICATE

Based on the Agency's recommendation and petitioner's application, the Board finds and certifies that petitioner's facilities 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 "[t]he 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 (2006)). The Clerk therefore will provide petitioner and the Agency 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) (2008); *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

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

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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 6, 2011, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board