

ILLINOIS POLLUTION CONTROL BOARD

July 26, 2017

EVERETT KAUFFMAN (Property)
Identification Number 18-11-100-001),)
)
Petitioner,)
)
v.) PCB 18-2
) (Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On July 20, 2017, the Illinois Environmental Protection Agency (IEPA or Agency) filed a recommendation that the Board certify certain facilities of Everett Kauffman as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2016); 35 Ill. Adm. Code 125. Kauffman’s chicken egg production facility is located at 622 Grammer Road in Carbondale, Jackson County. In this order, the Board describes the legal framework for tax certifications, discusses IEPA’s recommendation, and certifies that Kauffman’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 (2016); *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 (2016); *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 IEPA. *See* 35 Ill. Adm. Code 125.202. If IEPA receives a tax certification application, IEPA 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, IEPA’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 (2016); *see also* 35 Ill. Adm. Code 125.216(a).

IEPA RECOMMENDATION

IEPA states that it received a tax certification application from Kauffman on December 27, 2016, and that Kauffman supplemented the application on May 24, 2017, and May 30, 2017.¹ Rec. at 1. On July 20, 2017, IEPA filed a recommendation with the Board, attaching Kauffman's application and supplemental information (Exh. A). IEPA's recommendation identifies the facilities at issue:

[L]ivestock waste management facilities consisting of one shallow concrete manure pit (approximately 37 ft. x 538 ft. x 1.5 ft. deep), a livestock waste scraper system for the shallow concrete manure pit, the plastic slatted portion of the floor over the manure pit that captures and contains waste generated in the barn above, one deep concrete manure pit (approximately 40 ft. x 54 ft. x 8 ft. deep) that stores manure from the shallow pit, and a plastic perimeter drainage tile (approximately 4" x 192 ft.) located around the footing of the concrete deep manure pit to prevent flotation of the pit.² *Id.* at 1.

IEPA further describes the facilities as "used to collect, transport, and/or store livestock waste prior to cropland application." *Id.* at 2.

IEPA recommends that the Board certify that the facilities are pollution control facilities as defined in Section 11-10 of the Property Tax Code (35 ILCS 200/11-10 (2016)) with the "primary purpose of eliminating, preventing, or reducing water pollution." Rec. at 2-3; *see* Exh. A at 1 (IEPA memorandum), 2 (IEPA review sheet).

TAX CERTIFICATE

Based upon the IEPA's recommendation, Kauffman's application, and the Board's technical review, the Board finds and certifies that Kauffman's livestock waste management facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2016)). 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, which ever is later." 35 ILCS 200/11-25 (2016); *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 (2016)). The Clerk therefore will provide Kauffman and IEPA with a copy of this order.

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

² IEPA's recommendation adds that, "[a]s made clear in the tax certification requests, Exhibit A identifies certain additional portions of the facility that are not considered part of this request for certification, including (1) the 578' x 54' building, (2) skid loader, (3) manure spreader, (4) the 8' x 538' manure containment areas along each sidewall of the facility used for production purposes; and (5) the 40' x 40' Egg Room and 8' access door." Rec at 2, n.2 (emphasis in original).

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.* (2016)). *See* 35 ILCS 200/11-60 (2016).

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 26, 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 initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board