

ILLINOIS POLLUTION CONTROL BOARD
December 21, 2017

KEITH MORBY FINISHING BARNs)
(Property Identification Number 15-15-13-300-)
001),)
)
Petitioner,)
) PCB 18-41
v.) (Tax Certification – Water)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On November 30, 2017, the Illinois Environmental Protection Agency (IEPA or Agency) filed a recommendation that the Board certify certain facilities of Keith Morby Finishing Barns (Morby) 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. Morby’s swine operation is located at 2021 30th Avenue in Aledo, Mercer County. In this order, the Board describes the legal framework for tax certifications, discusses IEPA’s recommendation, and certifies that Morby’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 Morby on April 11, 2017¹ Rec. at 1. On November 30, 2017, IEPA filed a recommendation with the Board, attaching Morby's application (Rec. Exh. A). IEPA's recommendation identifies the facilities at issue:

[l]ivestock waste management facilities consisting of: a concrete pit (approximately 391 ft. x 52 ft. x 8 ft. deep) with ten concrete pump outs (approximately 6 ft. x 6 ft. x 8 ft. deep); a PVC perimeter tile drain (4 in. diameter and approximately 500 ft. in length); and slotted floors over the pit.² *Id.* at 1; *see Keith Morby Finishing Barn – Aledo v. IEPA*, PCB 08-85 (May 15, 2008); Rec. Exh. A at 17-18 (noting previous certification of similar facilities).

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

IEPA 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 (2016)) with the “primary purpose of eliminating, preventing, or reducing water pollution.” Rec. at 2-3; *see also* Rec. Exh. A at 1 (IEPA memorandum), 2 (IEPA review sheet).

TAX CERTIFICATE

Based upon IEPA's recommendation, Morby's application, and the Board's technical review, the Board finds and certifies that Morby'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) (citing 35 ILCS 200/11-30 (2016)). The Clerk therefore will provide Morby and IEPA with a copy of this order.

IT IS SO ORDERED.

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

² Morby's application includes the slatted floor over the manure pit in the description of the facility (Exh. A at 9, 11), and the record includes Morby's statement that the slatted floor is one part of the building considered a pollution control device (Exh. A at 8). However, when Morby withdrew the building above the manure pit from his application, he also referred to the slatted floor in the withdrawal (Exh. A at 4). IEPA's recommendation includes the slatted floor in its description. Because IEPA's recommendation is consistent with Morby's application and subsequent statement, the Board considers the slatted floor in its review of the application and IEPA's recommendation.

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). Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

| Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court | |
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| Parties | Board |
| Keith Morby Finishing Barns Attn: Keith Morby 1853 55th Avenue Aledo, Illinois 61231 | Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 |
| Illinois Environmental Protection Agency Attn: Roberto M. Durango 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276 | |

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 7, 2017, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board