

ILLINOIS POLLUTION CONTROL BOARD
January 11, 2018

ADAM NIEMERG (Property Identification)
Number 02-14-035-030)
)
Petitioner,)
)
v.) PCB 18-53
) (Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by C.K. Zalewski):

On December 28, 2017, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of Adam Niemerg 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. Adam Niemerg’s swine facility is located at 2250 E. 600th Street in Dieterich, Effingham County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Adam Niemerg’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 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 (2016); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Adam Niemerg on August 24, 2017.¹ Rec. at 1. On December 27, 2017, the Agency filed a recommendation with the Board, attaching Adam Niemerg' application (Rec. Exh. A). The Agency's recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of one concrete manure pit (approximately 169 ft. x 122 ft. x 8 ft.), the concrete slotted portion of the floor over the manure pit that captures and contains livestock waste generated in the barn above, six pump out pits (approximately 6 ft. x 5 ft. x 8 ft. each) to allow manure removal from the manure pit, and HDPE drainage pipes (approximately 656 ft. x 4 in.) located around the footing of the manure pit to prevent flotation of the pit. *Id.* at 1.

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

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 (2016)) with the "primary purpose of eliminating, preventing, or reducing water pollution." Rec. at 2-3; *see also* Rec. Exh. A (Agency technical memorandum).

TAX CERTIFICATE

Based upon the Agency's recommendation, Adam Niemerg's application, and the Board's technical review, the Board finds and certifies that Adam Niemerg'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 Adam Niemerg 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.* (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.

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

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
Adam Niemerg 22500 E. 600th Street Dieterich, Illinois 62424	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: Christine M. Zeivel 1021 North Grand Ave. East P.O. Box 19276 Springfield, Illinois 62794-9276 Christine.Zeivel@Illinois.gov	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 11, 2018, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board