

ILLINOIS POLLUTION CONTROL BOARD
July 25, 2013

David E. Brewer-Andover (Property)	
Identification Number 17-22-400-009))	
Petitioner,)	
)	
v.)	PCB 14-9
)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	
)	

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

On July 18, 2013, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of David E. Brewer, Andover (petitioner) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2010); 35 Ill. Adm. Code 125. Petitioner’s livestock facility is located at 9859 N 850 Avenue in Cambridge, Henry 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 (2010); *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 (2010); *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 (2010); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from petitioner on May 16, 2012.¹ Rec. at 1. On July 18, 2013, the Agency filed a recommendation on the application with the Board, attaching petitioner's application. The Agency's recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of an approximately 395' x 51' x 8' deep concrete manure pit under the building, slotted floor over the pits, and ten 4' x 4' x 8' deep concrete manure pump outs. *Id.*

The Agency further describes the facilities as being used for "the primary purpose of collecting, transporting, and/or storing livestock wastes prior to cropland application." *Id.* The Agency's recommendation identifies the location of the facilities as Section 22, T15N, R2E of the 4th PM in Henry County. *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 (2010)) with the primary purpose of "eliminating, preventing, or reducing water pollution, or as otherwise provided in 35 Ill. Adm. Code 125.200, and are eligible for tax certification from the Board." Rec. at 2.

TAX CERTIFICATE

Based upon 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 (2010)). 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 (2010); *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 (2010)). The Clerk therefore will provide petitioner and the Agency with a copy of this order.

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

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.* (2010)). *See* 35 ILCS 200/11-60 (2010).

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 25, 2013, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault", enclosed in a thin black rectangular border.

John T. Therriault, Clerk
Illinois Pollution Control Board