

ILLINOIS POLLUTION CONTROL BOARD
August 22, 2013

BORGIC ENTERPRISES, INC.-NEWTON)
(Property Identification Number)
29-13-35-300-008)
Petitioner,)
)
v.) PCB 14-15
) Tax Certification -Water
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On August 15, 2013 the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of Borgic Enterprises, Inc., Newton (Petitioner) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2012); 35 Ill. Adm. Code 125. Petitioner’s livestock waste management facility is located at 4204 N. 1600th Street in Newton, Jasper 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 (2012); *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 (2012); *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 (2012); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Petitioner on August 7, 2012.¹ Rec. at 1. On August 8, 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 one concrete manure pit approximately (60ft. x 206 ft. x 8 ft.) with 4 concrete pump out pits approximately (5ft. x 5 ft. x 8 ft. each) and the portion of concrete slotted flooring over the manure pit in building #1; one concrete manure pit approximately (293.83 ft. x 82.5 ft. x 2 ft.) with approximately 50 ft. of 1 0-inch diameter pvc manure transfer pipe connecting this building with building #2b and the portion of plastic slotted flooring over the manure pit in building #2a; one concrete manure pit approximately (77.33 ft. x 321 ft. x 8ft.) with 8 concrete pump out pits approximately (5 ft. x 5 ft. x 8 ft. each) and the portion of concrete slotted flooring over the manure pit in building #2b. *Id.*

The Agency further describes the facilities as being used for "collecting, transporting, and/or storing livestock wastes prior to cropland application." Rec. at 1. The Agency's recommendation identifies the location of the facilities as "Section 35, T6N, R10E of the 3rd PM in Jasper 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 (2012)) with the primary purpose of "eliminating, preventing or reducing water pollution." Rec. at 4.

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 (2012)). 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, whichever is later." 35 ILCS 200/11-25 (2012); *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 (2012)). 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.* (2012)). *See* 35 ILCS 200/11-60 (2012).

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 22, 2013, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board