

ILLINOIS POLLUTION CONTROL BOARD
December 15, 2016

JOHN C. FRIEDERS,)
)
 Petitioner,)
)
 v.) PCB 17-18
) (Tax Certification - Water)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J.A. Burke):

On November 22, 2016, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of John C. Frieders as pollution control facilities for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2014); 35 Ill. Adm. Code 125. Mr. Frieders' wean-to-finish facility is located at 14305 Pine Road in Sandwich, DeKalb County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency's recommendation, and certifies that Mr. Frieders' 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 (2014); *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 (2014); *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 (2014); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Mr. Frieders on January 26, 2016.¹ Rec. at 1. On November 22, 2016, the Agency filed a recommendation with the Board, attaching Mr. Frieders' application. The Agency's recommendation identifies the facilities at issue:

One concrete manure pit (approximately 128 ft. x 36 ft. x 8 ft. deep), seven concrete pump out ports (each approximately 4 ft. x 6 ft. x 8 ft. deep), and slotted floors over the pit that collect livestock waste for Building 1;

The Composting building (Building 3) with a concrete floor and approximate dimensions of 30 ft. x 40 ft. x 18 ft. high);

One concrete manure pit (approximately 160 ft. x 101 ft. x 8 ft. deep), six concrete pump out ports (each approximately 5 ft. x 6 ft. x 8 ft. deep), a PVC perimeter foundation drain (approximately 4 in. diameter x 582 ft. in length), and slotted floors over the pit that collect livestock waste for Building 4;

One concrete manure pit (approximately 180 ft. x 54 ft. x 8 ft. deep), four concrete pump out ports (each approximately 6 ft. x 8 ft. x 8 ft. deep), a PVC perimeter foundation drain (approximately 4 in. diameter x 516 ft. in length), and slotted floors over the pit that collect livestock waste for Building 5;

One concrete manure pit (approximately 100 ft. x 30 ft. x 8 ft. deep), one concrete pump out port (approximately 6 ft. x 5.5 ft. x 8 ft. deep), and slotted floors over the pit that collect livestock waste for Building 6;

The concrete Capped Pit for Nursery with dimensions of approximately 12 ft. x 50 ft. x 8 ft. deep that stores livestock waste; and

Three shallow concrete pits (each approximately 60 ft. x 6.67 ft. x 1 ft. deep) and two shallow concrete pits (Each approximately 45 ft. x 10 ft. x 1.33 ft. deep) for the Nursery Building. *Id.* at 1-2.

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

The Agency 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 (2014)) with the primary purpose "of eliminating, preventing, or reducing water pollution." Rec. at 2-3; *see also* Rec., Agency Technical Memorandum.

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

TAX CERTIFICATE

Based upon the Agency's recommendation, Mr. Frieders' application, and the Board's technical review, the Board finds and certifies that Mr. Frieders' facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2014)). 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 (2014); *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 (2014)). The Clerk therefore will provide Mr. Frieders 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.* (2014)). *See* 35 ILCS 200/11-60 (2014).

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 15, 2016, by a vote of 4-0, Member Santos voted Present.



John T. Therriault, Clerk
Illinois Pollution Control Board