

ILLINOIS POLLUTION CONTROL BOARD

March 3, 2016

PRO AG INVESTORS, LLC (Property)
Identification Number 17-24-400-003),)
)
Petitioner,)
)
v.) PCB 16-80
) (Tax Certification - Water)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On February 2, 2016, the Illinois Environmental Protection Agency (Agency) filed a recommendation (Rec.) that the Board certify certain livestock waste management facilities of Pro Ag Investors, LLC (Pro Ag) 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. Pro Ag’s livestock waste management facilities are located at 804 N. County Road 1300 in Basco, Hancock County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Pro Ag’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 (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 Pro Ag on August 3, 2015. Rec. at 1. On February 2, 2016, the Agency filed a recommendation with the Board, attaching Pro Ag's application. The Agency's recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of one concrete manure pit (approximately 281 ft. x 71 ft. x 8 ft. deep), a slotted floor over the pit that collects swine waste, and four 6 ft. x 6 ft. x 9 ft. deep pumpout pits to allow manure removal from the manure pit. *Id.*

The Agency further describes the facilities as being "used to contain livestock waste prior to cropland application." *Id.*

The Agency recommends that the Board certify the facilities as 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 or as otherwise provided in 35 Ill. Adm. Code 125.200. Rec. at 2; *see also* Agency Technical Memorandum.

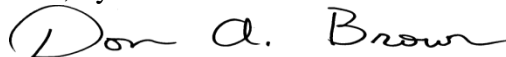
TAX CERTIFICATE

Based upon the Agency's recommendation, Pro Ag's application, and the Board's technical review, the Board finds and certifies that Pro Ag's 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 Pro Ag 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, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 3, 2016, by a vote of 5-0.



Don A. Brown, Assistant Clerk
Illinois Pollution Control Board