

ILLINOIS POLLUTION CONTROL BOARD  
August 3, 2023

MITCH BROWN (Property Identification )  
Number 02-15-200-004), )  
 )  
Petitioner, )  
 )  
v. ) PCB 24-07  
 ) (Tax Certification - Water)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (B .F. Currie):

On July 21, 2023, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify specified facilities of Mitch Brown (Brown) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2022); 35 Ill. Adm. Code 125. Brown’s swine finishing facility is located at 1850 Township Rd. 2750 N., Little York, Henderson County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Brown’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 (2022); *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 (2022); *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 (2022); *see also* 35 Ill. Adm. Code 125.216(a).

### AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from Brown on September 16, 2022.<sup>1</sup> Rec. at 1. On July 21, 2023, the Agency filed a recommendation with the Board, attaching Brown’s application (Rec. Exh. A). The Agency’s recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of one (1) reinforced concrete livestock waste pit under “Finishing Building #1” and measuring 281.3 ft. (length) x 71.17 ft. (width) x 8 ft. (depth) with 4 concrete pump out pits each measuring 6 ft. (length) x 8 ft. (width) x 8 ft. (depth) and approximately 756 linear feet of 4 inch diameter HDPE perimeter drain tile and approximately 19,600 sq. ft. of concrete slatted flooring over this manure pit. *Id.* at 1.

The Agency further describes the facilities as: “These livestock waste management facilities are used to collect, transport and/or store livestock waste prior to cropland application.” *Id.*

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 (2022)) with the “primary purpose of eliminating, preventing, or reducing water pollution,” etc., or similar language that matches that of Property Tax Code 35 ILCS 200/11-10 (2022).” Rec. at 2; *see also* Rec. Exh. A (Agency technical memorandum).

### TAX CERTIFICATE

Based upon the Agency’s recommendation, Brown’s application, and the Board’s technical review, the Board finds and certifies that Brown’s livestock waste management facilities are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2022)). 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 (2022); *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 (2022)). The Clerk therefore will provide Brown and the Agency with a copy of this order.

IT IS SO ORDERED.

Member M. D. Mankowski abstained.

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.* (2022)). *See* 35 ILCS 200/11-60 (2022). Within 35 days after receiving this final

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<sup>1</sup> The Agency’s recommendation is cited as “Rec. at \_.”

Board order, a party to this Board proceeding may file a motion asking the Board to reconsider or modify the order. 35 Ill. Adm. Code 101.520. Filing a motion to reconsider this final Board order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

| <b>Names and Addresses for Receiving Service of<br/>Any Appeal Filed with the Circuit Court</b>   |   |
|---|---|
| <b>Parties</b>  | <b>Board</b>  |
| Mitch Brown<br>1850 Township Road 2750 N.<br>Little York, Illinois 61453<br><a href="mailto:Mitchb440@gmail.com">Mitchb440@gmail.com</a>  | Illinois Pollution Control Board<br>60 W. Van Buren St., Suite 630<br>Chicago, Illinois 60605 |
| Amanda S. Kimmel<br>Illinois Environmental Protection Agency<br>1021 North Grand Avenue East<br>P.O. Box 19276<br>Springfield, Illinois 62794<br><a href="mailto:Amanda.kimmel@illinois.gov">Amanda.kimmel@illinois.gov</a> |   |

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 3, 2023, by a vote of 3-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board