

ILLINOIS POLLUTION CONTROL BOARD

April 3, 2008

VON HOLTEN FARMS - LYNDON)
(Property Identification Number 15-01-300-)
001),)
)
Petitioner,)
) PCB 08-60
v.) (Tax Certification - Water)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

On March 31, 2008, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of Von Holten Farms - Lyndon (Von Holten) as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2006); *see also* 35 Ill. Adm. Code 125). Von Holten’s swine production operation is located at 19170 Rush Road, Lyndon, Whiteside County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Von Holten’s manure management structures at its site 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 (2006); *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 (2006); *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 (2006); *see also* 35 Ill. Adm. Code 125.216(a).

AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from petitioner on January 4, 2007. Agency Rec. at 1. On March 31, 2008, the Agency filed a recommendation on the application with the Board, attaching the application. The Agency's recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of one concrete manure pit (360 ft. x 50 ft. x 4 ft. deep) and the slotted concrete portion of the floor over the manure pit, one concrete manure pit (360 ft. x 50 ft. x 2 ft. deep) and the slotted concrete portion of the floor over the manure pit, one concrete manure storage tank (126 ft. diameter x 12 ft. deep), one concrete manure reception pit (5 ft. diameter x 12 ft. deep), and approximately 360 ft. of 8-inch diameter PVC manure transfer pipe. *Id.* at 1.

The Agency's recommendation further describes the facilities: "These livestock waste management facilities are used to collect, transport and/or store livestock wastes prior to cropland application." Agency Rec. at 2. The Agency's recommendation also identifies the location of the facilities: SW 1/4 of Section 1, T20N, R5E of the 4th P.M. in Whiteside County. *Id.* at 1.

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 (2006)) because the primary purpose of the facilities is "eliminating, preventing, or reducing water pollution." Agency Rec. at 2.

TAX CERTIFICATE

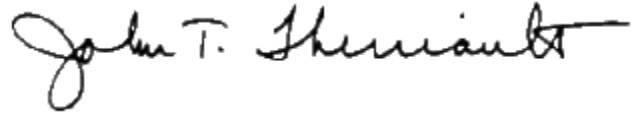
Based on the Agency's recommendation and Von Holten's application, the Board finds and certifies that Von Holten's facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2006)). Under Section 11-25 of the Property Tax Code, the effective date 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 (2006); *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 (2006)). The Clerk therefore will provide Von Holten and the Agency with a copy of this order.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The

Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board