

ILLINOIS POLLUTION CONTROL BOARD
December 6, 2018

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| JOHN BURKHOLDER (Property |) | |
| Identification Number 02-02-08-000-302), |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 19-74 |
| |) | (Tax Certification - Air) |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by C.M. Santos):

On November 14, 2018, the Illinois Environmental Protection Agency (IEPA) filed a recommendation that the Board certify certain facilities of John Burkholder as “pollution control facilities” for preferential tax treatment under the Property Tax Code. *See* 35 ILCS 200/11-5 *et seq.* (2016); 35 Ill. Adm. Code 125. Burkholder’s swine finishing facility is located at 2450 County Road 700 E. in Lovington, Moultrie County. In this order, the Board describes the legal framework for tax certifications, discusses IEPA’s recommendation, and certifies that Burkholder’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 (2016); *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 (2016); *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 IEPA. *See* 35 Ill. Adm. Code 125.202. If IEPA receives a tax certification application, IEPA 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, IEPA’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 (2016); *see also* 35 Ill. Adm. Code 125.216(a).

IEPA RECOMMENDATION

IEPA states that it received a tax certification application from Burkholder on September 4, 2018.¹ Rec. at 1. On November 14, 2018, IEPA filed a recommendation with the Board, attaching Burkholder’s application (Rec. Exh. A). IEPA’s recommendation identifies the facilities at issue:

[l]ivestock waste management facilities consisting of one concrete manure pit (approximately 332 ft. x 81 ft. x 8 ft. deep), the concrete slatted portion of the floor over the manure pit that captures and contains waste generated in the barn above, six pump out pits (each approximately 6 ft. x 6 ft. x 8 ft.) to allow manure removal from the manure pit, and HDPE perimeter drainage pipes (approximately 900 ft. x 4 in.) located around the footing of the manure pit to prevent flotation of the pit. *Id.* at 1.

IEPA further describes the facilities as being “used to collect, transport, and/or store livestock waste prior to cropland application.” *Id.* at 2.

IEPA 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 (2016)) with the “primary purpose of eliminating, preventing, or reducing water pollution.” Rec. at 2; *see also* Rec. Exh. A at 1 (IEPA memorandum), 2 (IEPA review sheet).

TAX CERTIFICATE

Based upon IEPA’s recommendation, Burkholder’s application, and the Board’s technical review, the Board finds and certifies that Burkholder’s livestock waste management facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2016)). 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 (2016); *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 (2016)). The Clerk therefore will provide Burkholder and IEPA with a copy of this order.

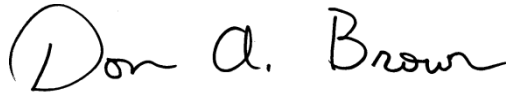
IT IS SO ORDERED.

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.* (2016)). *See* 35 ILCS 200/11-60 (2016). Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

¹ IEPA’s recommendation is cited as “Rec. at _.”

| Names and Addresses for Receiving Service of Any Appeal Filed with the Circuit Court | |
|---|--|
| Parties | Board |
| John Burkholder 579 County Road 2400 N. Lovington, Illinois 61937 | Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 |
| Illinois Environmental Protection Agency Attn: Michael S. Roubitchek, Assistant Counsel 1021 North Grand Avenue East PO Box 19276 Springfield, Illinois 62794-9276 | |

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 6, 2018, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board