

ILLINOIS POLLUTION CONTROL BOARD

June 16, 2005

BORGIC ENTERPRISES, INC. (Newton)	)	
(Livestock Waste Management Facilities	)	
(Property Identification Number	)	
29-13-35-300-008)),	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 05-210
	)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J.P. Novak):

On June 10, 2005, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of Borgic Enterprises, Inc. (Borgic Enterprises) as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2002)). The facilities are livestock waste management facilities at Borgic Enterprises’ farrow-to-finish swine confinement facility in Newton, Jasper County. The Agency filed the recommendation under Part 125 of the Board’s procedural rules (35 Ill. Adm. Code 125). In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that Borgic Enterprises’ 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 (2002); *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 (2002); *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. 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. 35 Ill. Adm. Code 125.204(a). Among other things, the Agency’s filing must recommend that the Board issue or deny tax certification. 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 (2002); *see also* 35 Ill. Adm. Code 125.216(a).

### **AGENCY RECOMMENDATION**

The Agency states that it received a tax certification application from Borgic Enterprises for its livestock waste management facilities at Borgic Enterprises’ farrow-to-finish swine confinement facility on May 12, 2004. Agency Recommendation (Agency Rec.) at 1. On June 10, 2005, the Agency filed a recommendation on the application with the Board. The Agency’s recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of one concrete manure pit (68 ft. x 304 ft. x 2 ft. deep) and the steel and plastic portion of the flooring over the manure pit in the farrow building; one concrete pit (69 ft. x 635 ft. x 8 ft. deep) with six concrete pump-out pits (each 4 ft. x 4 ft. x 8 ft. deep) and the concrete slotted portion of the flooring over the manure pit in the main gestation building; one concrete pit (38 ft. x 178 ft. x 8 ft. deep) with seven PVC pump-out pits (each 10 inches in diameter) and the concrete slotted portion of the flooring over the manure pit in the gestation building (G3); one concrete pit (34 ft. x 131 ft. x 5 ft. deep) with three PVC pump-out pits (each 10 inches in diameter) and the concrete slotted portion of the flooring over the manure pit in the farrow building (F5); one concrete pit (38 ft. x 103 ft. x 4 ft. deep) and the concrete slotted portion of the flooring over the manure pit in the gestation building; one concrete pit (34 ft. x 150 ft. x 5 ft. deep) with four PVC pump-out pits (each 10 inches in diameter) and the concrete slotted portion of the flooring over the manure pit in the gestation building; one concrete pit (38 ft. x 56 ft. x 6 ft. deep) with one concrete pump-out pit (2 ft. x 6 ft. x 6 ft. deep) and the concrete slotted portion of the flooring over the manure pit in the gestation building; one concrete pit (94 ft. x 188 ft. x 8 ft. deep) with one PVC pump-out pit (30 inches in diameter) and the concrete slotted portion of the flooring over the manure pit in the gestation building; one concrete pit (47 ft. x 128 ft. x 2 ft. deep) and the wire portion of the flooring over the manure pit in the farrow building; one concrete pit (32 ft. x 72 ft. x 8 ft. deep) with four PVC pump-out pits (each 10 inches in diameter) and the concrete slotted portion of the flooring over the manure pit in the ISO building; one concrete pit (40 ft. x 170 ft. x 8 ft. deep) with two concrete pump-out pits (each 4 ft. x 4 ft. x 8 ft. deep) and the concrete slotted portion of the flooring over the manure pit in the ISO building; one clay-line earthen storage basin (120 ft. x 240 ft. x 16 ft. deep) with riprap protection; two 5-horsepower manure transfer pipes; approximately 940 feet of 4-inch PVC manure transfer pipe; and approximately 94 feet of 10-inch PVC manure transfer pipe. Agency Rec. at 1-2.

The Agency’s recommendation also identifies the location of the facilities: Section 35, Township 6 North, Range 10 East of the Third Principal Meridian, in Jasper 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

(2002)) because the primary purpose of the facilities is eliminating, preventing, or reducing water pollution. Agency Rec. at 3.

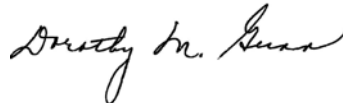
### **TAX CERTIFICATE**

The Board finds and certifies that Borgic Enterprises' facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2002)). 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 (2002); *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 (2002)). The Clerk therefore will provide Borgic Enterprises 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) (2002); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 16, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board