

ILLINOIS POLLUTION CONTROL BOARD

August 8, 2013

BMI FARMS, LLC (Property Identification	)	
Number 04-038-007-00),	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 14-12
	)	(Tax Certification – Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (C.K. Zalewski):

On July 26, 2013, the Illinois Environmental Protection Agency (Agency) filed a recommendation that the Board certify certain facilities of BMI Farms, LLC (BMI) as “pollution control facilities” for preferential tax treatment under the Property Tax Code. See 35 ILCS 200/11-5 et seq. (2010); 35 Ill. Adm. Code 125. BMI’s livestock waste management facilities are located at RR 1 Box 161 in Versailles, Brown County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that portions of BMI’s livestock waste management facility identified in this order 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 (2010); 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 (2010); 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 (2010); see also 35 Ill. Adm. Code 125.216(a).

### AGENCY RECOMMENDATION

The Agency states that it received a tax certification application from BMI on December 14, 2012.<sup>1</sup> Rec. at 1. On July 26, 2013 the Agency filed a recommendation on the application with the Board, attaching BMI's application. The Agency's recommendation identifies the facilities at issue as livestock waste management facilities consisting of:

Two 101' x 305' x 8' deep concrete manure pits overlain with concrete slatted floors, twelve 6' x 6' pump outs, and approximately 1,625 feet of 2" x 4" of perforated drain around the perimeter of the swine buildings with 4" plastic tile outlet pipe. *Id.*

The Agency further describes the facilities as being used to "collect, transport and/or store livestock wastes prior to cropland application." *Id.* The Agency's recommendation identifies the location of the facilities as Section 27, Township 1S, Range 2 West of the 4th P.M in Brown County." *Id.*

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 (2010)) with the primary purpose of "eliminating, preventing, or reducing water pollution." *Id.*

### TAX CERTIFICATE

Based upon the Agency's recommendation and BMI's application, the Board finds and certifies that BMI's facilities identified in this order are pollution control facilities under the Property Tax Code (35 ILCS 200/11-10 (2010)). 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, whichever is later." 35 ILCS 200/11-25 (2010); *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 (2010)). The Clerk therefore will provide BMI and the Agency with a copy of this order.

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<sup>1</sup> The Agency's recommendation is cited as "Rec."

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.* (2010)). *See* 35 ILCS 200/11-60 (2010).

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 8, 2013, 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 at the end.

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John T. Therriault, Clerk  
Illinois Pollution Control Board