

ILLINOIS POLLUTION CONTROL BOARD

June 18, 2009

MILLIMAN PORK (Property Identification	)	
Numbers 75-18-12-100-003),	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 09-124
	)	(Tax Certification - Water)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On June 11, 2009, the Illinois Environmental Protection Agency (Agency) recommended that the Board certify certain facilities of Milliman Pork (petitioner) as “pollution control facilities” for preferential tax treatment under the Property Tax Code (35 ILCS 200/11-5 *et seq.* (2006)). The Agency filed the recommendation under Part 125 of the Board’s procedural rules (35 Ill. Adm. Code 125). Petitioner’s farrow-to-wean facility is located at 2775 1700th Street in West Liberty, Jasper County. In this order, the Board describes the legal framework for tax certifications, discusses the Agency’s recommendation, and certifies that petitioner’s manure management structures at its site are water 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. 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 (2006); *see also* 35 Ill. Adm. Code 125.216(a).

### AGENCY RECOMMENDATION

The Agency states that it received a tax certification request from petitioner on August 13, 2007. Agency Rec. at 1.<sup>1</sup> On June 11, 2009, the Agency filed a recommendation on the request with the Board. The Agency's recommendation identifies the facilities at issue:

Livestock waste management facilities consisting of one concrete flush gutter (approximately 38 ft. x 114 ft. x 0.67 ft. deep) with a concrete flush pit (approximately 38 ft. x 9 ft. x 3 ft. deep) and 3 plastic flush tanks (each 4 ft. x 11 ft. x 4ft. deep) in the farrowing house; one concrete flush gutter (approximately 32 ft. x 246 ft. x 0.67 ft. deep) with the concrete slotted portion of the floor over the concrete flush gutter, with a concrete flush pit (approximately 32 ft. x 8 ft. x 3 ft. deep) and 2 plastic flush tanks (each 5.5ft. x 8.5 ft. x 4.5 ft. deep) in the gestation barn; a clay-lined earthen lagoon (approximately 200 ft. x 200 ft. x 13 ft. deep); and approximately 275 feet of 8 inch PVC manure transfer piping. *Id.*

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." *Id.* The Agency's recommendation also identifies the location of the facilities: SW 1/4 of the NW 1/4 of Section 12, T5N, R10E of the 3rd P.M. in Jasper 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 (2006)) because the primary purpose of the facilities is "eliminating, preventing, or reducing water pollution." Agency Rec. at 2.

### TAX CERTIFICATE

The Board finds and certifies that petitioner'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, whichever 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 petitioner and the Agency with a copy of this order.

IT IS SO ORDERED.

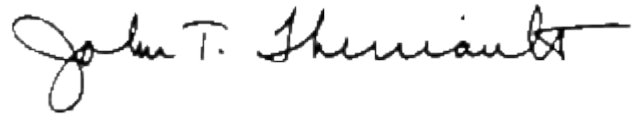
Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706.

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

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 June 18, 2009, by a vote of 5-0.

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.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board