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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DEC 06 2006

BROADUS OIL,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY,

Respondent.

STATE OF ILLINOIS
Pollution Control Board

PCB 04-31

PCB 05-43

(UST Appeal)

NOTICE OF FILING AND PROOF OF SERVICE

To: Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Melanie Jarvis
Division of Legal Counsel
IL Environmental Protection Agency
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

The undersigned certifies that an original and nine copies of Petitioner's Motion to Consolidate for Purpose of Decision were served upon the Clerk of the Illinois Pollution Control Board, and one copy was served upon the hearing officer and the above party of record in this case by enclosing same in envelopes with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mail Box before 5:30 p.m. in Springfield, Illinois on the 4th day of December, 2006.


Stephen F. Hedinger

Hedinger Law Office
2601 South Fifth Street
Springfield, IL 62703
Telephone: (217) 523-2753
Fax: (217) 523-4366
hedinger@cityscape.net

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STATE OF ILLINOIS
Pollution Control Board

1. This matter is currently pending before this Board on cross motions for summary judgment.
2. Petitioner has become aware that in another case pending before this Board, FedEx Ground Package System, Inc. v. IEPA, PCB 07-012, the precise legal issue that is before the Board in the instant matter is also raised in a motion for summary judgment.
3. The FedEx Ground Package System case is currently still in the briefing stage, with the Petitioner's cross-motion for summary judgment due to be filed by December 15, 2006.

4. Because of the identical legal issue, consolidation of the instant matter with the FedEx Ground Package System case is prudent and would constitute efficient and effective use of this Board's resources. Although consolidating the two matters for decision may result in a slight delay in this Board's ruling in the instant case, that slight delay would be more than made up for through consistency of the Board's ruling, and the opportunity for the Board to consider the legal issue in more than one single, isolated factual context.
5. This Board's procedural rule 101.406 expressly allows for the consolidation of two or more proceedings for the purpose of hearing *or decision* or both. Consolidation is allowed where it is in the interest of convenient, expeditious, and complete determination of claims, and where the consolidation will not materially prejudice any party. In addition, consolidation is not available where the burden of proof varies.
6. Again, consolidation here will be convenient, expeditious, and will allow for a complete and consistent determination of the legal issue presented by both cases. In addition, no prejudice will accrue as to any party by this consolidation. Finally, both pending matters are appeals from IEPA LUST Fund decisions, and the two cases require the same burden of proof.
7. Simultaneously with this motion, Broadus is submitting a supplemental decision deadline waiver in order to match the decision deadline in this case with the current decision deadline in the FedEx Ground Package System case. Accordingly, the two cases can proceed at the same pace with respect to this Board's review of summary judgment pleadings, without concern that the instant

matter will reach its deadline in advance of the FedEx Ground Package System matter.

8. The petitioner in FedEx Ground Package System case has filed a similar motion to consolidate in PCB 07-012.

WHEREFORE, Petitioner, BROADUS OIL, requests that this Board consolidate this matter for decision with PCB 07-012, and grant to Petitioner all such other and further relief as this Board deems just and appropriate.

Respectfully submitted,

BROADUS OIL,
Petitioner,

By its attorney,

HEDINGER LAW OFFICE

By


Stephen F. Hedinger

Hedinger Law Office
2601 South Fifth Street
Springfield, IL 62703
Telephone: (217) 523-2753
Fax: (217) 523-4366
hedinger@cityscape.net