BEFORE THE POLLUTION CONTROL BOARD OF THE STATE OF ILLINOIS

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EVERGREEN FS, INC.,

Petitioner,

v.

)

ILLINOIS ENVIRONMENTAL

DEC 20 2011
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

RIGINAL

NOTICE OF FILING AND PROOF OF SERVICE

To: John T. Therriault, Acting Clerk
Illinois Pollution Control Board
100 West Randolph Street
State of Ulinois Puilding, Suite 11, 50

State of Illinois Building, Suite 11-500

Chicago, IL 60601

Melanie Jarvis

PCB Nos. 11-51 & 12-61

(LUST Permit Appeal)

Illinois Environmental Protection Agency

1021 North Grand Avenue East

P.O. Box 19276

Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.406, PETITIONER'S MOTION TO CONSOLIDATE APPEALS FOR PURPOSES OF HEARING, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 15th day of December, 2011.

Respectfully submitted, EVERGREEN FS, INC., Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

Patrick D. Shaw MOHAN, ALEWELT, PRILLAMAN & ADAMI 1 North Old Capitol Plaza, Suite 325 Springfield, IL 62701-1323 Telephone: 217/528-2517

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EVERGREEN FS, INC.,)	Pollution Control Board	
Petitioner,)		
V)	PCB Nos. 11-51 & 12-61 (LUST Permit Appeal)	
ILLINOIS ENVIRONMENTAL)		
PROTECTION AGENCY,)		
Respondent.)	RIGINAL	

PETITIONER'S MOTION TO CONSOLIDATE APPEALS

FOR PURPOSES OF HEARING

NOW COMES Petitioner, Evergreen FS, Inc. ("Evergreen"), pursuant to Section 101.406 of the Pollution Control Board's Procedural Rules, 35 Ill. Admin. Code Sections 101.406, and moves to consolidate the above-referenced appeals for purposes of hearing, and in support thereof states as follows:

- 1. On February 23, 2011, Evergreen filed a LUST appeal, which was accepted for hearing by the Board on March 3, 2011 and assigned PCB No. 11-51.
- 2. The appeal in PCB No. 11-51 arises from a decision by the Agency to reduce an application for payment from the LUST Fund by using a 50% apportionment for the reason that "[t]he release for lust incident number 910580 was deemed ineligible." PCB No. 11-51, Ex. A (denial letter).
- 3. On November 16, 2011, Evergreen filed a second LUST appeal, which was accepted for hearing by the Board on December 2, 2011 and assigned PCB No. 12-61.
- 4. The appeal in PCB No. 12-61 arises from a decision by the Agency to reduce a second application for payment from the LUST Fund by using a 50% apportionment for the

reason that "Lust incident number 910580 is not eligible tor reimbursement." PCB No. 12-61, Ex. A (denial letter).

- 5. While the appeals arise from two different applications for payment, denied in two different Agency decision letters, the reason given for reducing the payment in half appears to arise from the same factual issues involving a 1991 incident and application of the same legal provision, 415 ILCS 5/57.8(m) (apportionment).
- 6. "The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary." (35 Ill. Admin. Code § 101.406)
- 7. Petitioner submits that because the two appeals relate to the same or very similar legal and factual issues, consolidation would be in the interest of a convenient, expeditious, and complete determination of the disputes. In particular, having one hearing and one briefing schedule would avoid duplicative efforts and avoid any potential inconsistencies.
 - 8. Counsel for the Agency has stated that she has no objection to consolidation.
 - 9. The burden of proofs in these LUST appeals are the same.
- 10. Currently, both appeals are scheduled for hearing on February 15, 2012, and Petitioner is filing waivers of decision deadlines to June 21, 2012 to facilitate it.

WHEREFORE, Petitioner, Evergreen, prays that the Board consolidate these appeals for purposes of hearing and for such other and further relief as it deems meet and just.

EVERGREEN FS, INC., Petitioner

By its attorneys, MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

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THIS FILING IS SUBMITTED ON RECYCLED PAPER