

ORIGINAL

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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DEC 08 2006

STATE OF ILLINOIS
Pollution Control Board

FEDEX GROUND PACKAGE SYSTEM, INC.,)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB 07-12
(UST Appeal)

NOTICE

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

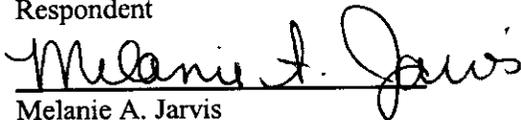
Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Thomas W. Daggett
Daggett Law Firm
Chicago Title Tower, Suite 4950
161 North Clark Street
Chicago, IL 60601

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board **ILLINOIS EPA'S OBJECTION TO PETITIONERS' MOTION TO CONSOLIDATE FOR PURPOSE OF DECISION**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: December 6, 2006

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**ILLINOIS EPA'S OBJECTION TO PETITIONERS' MOTION TO CONSOLIDATE
FOR PURPOSE OF DECISION**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500(e), hereby respectfully objects to the Motion to Consolidate for Purpose of Decision filed by the Petitioners, FedEx Ground Package System, Inc. In reply to the Petitioners' motion, the Illinois EPA states as follows:

1. Consolidation of the above captioned appeal with the Broadus Oil appeals, (Consolidated: PCB 04-31 and 05-43) is inappropriate and will cause material prejudice to the Illinois EPA.
2. The Petitioner in Broadus Oil and the Petitioner in Fed Ex are unrelated parties.
3. The underlying facts in each case do not arise from the same act or occurrence.
4. The sites at issue are not the same nor are they related in any manner.
5. The Illinois EPA issued each Petitioner its own decision letters based upon the facts and circumstances presented in each distinct case.

6. The Broadus Oil decision was made pursuant to Part 732 of the regulations, while the Fed Ex decision was made pursuant to Part 734 of the regulations.
7. The Broadus Oil appeals also include a reimbursement denial that is not included in the Fed Ex case.
8. The PCB 04-31 appeal in Broadus Oil was filed on December 15, 2003. The docket in PCB 05-43 was opened on September 2, 2004.
9. The Illinois EPA's Motion for Summary Judgment in the Broadus Oil case was filed on May 8, 2006.
10. The Petitioner in Broadus Oil was afforded several extensions of time by which to file a response to the Illinois EPA's Motion for Summary Judgment. The response was not filed in Broadus Oil until September 22, 2006.
11. The Illinois EPA filed a Reply to Broadus Oil's response on September 28, 2006. Petitioner did not file any further pleadings in that case. By consolidating the cases, the Petitioner in Broadus Oil is given another opportunity to argue its case through the pleadings in the Fed Ex case. This opportunity has long expired.
12. The cases should be treated separately and on their own merits.
13. The Illinois EPA would be materially prejudiced by any further delay in the Broadus Oil case.

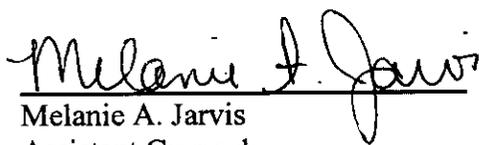
VI. CONCLUSION

For the reasons stated herein, as well as those previously made by the Illinois EPA, the Illinois EPA respectfully requests that the Board deny the Petitioner's request for consolidation for purpose of decision.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
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217/782-9143 (TDD)
Dated: December 6, 2006

This filing submitted on recycled paper.

ORIGINAL

CERTIFICATE OF SERVICE

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DEC 08 2006

STATE OF ILLINOIS
Pollution Control Board

I, the undersigned attorney at law, hereby certify that on December 6, 2006 I served true and

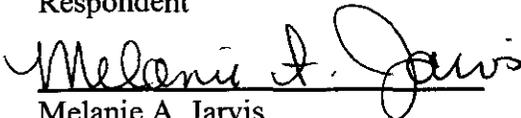
correct copies of **ILLINOIS EPA'S OBJECTION TO PETITIONERS' MOTION TO CONSOLIDATE FOR PURPOSE OF DECISION**, by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. Mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Bradley Halloran, Hearing Officer
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