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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EVERGREEN FS, INC.,)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
 Respondent.)

PCB Nos. 11-51 & 12-61
(LUST Permit Appeal)

ORIGINAL

**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 for 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

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