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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **NOV 28 2006**

STATE OF ILLINOIS  
Pollution Control Board

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

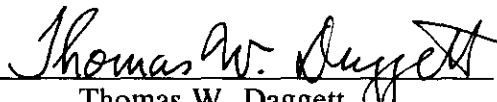
PCB 07-12  
(UST Fund Appeal)

NOTICE OF FILING AND PROOF OF SERVICE

TO: Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601

Melanie A. Jarvis, Esq.  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on November 28, 2006, I hand delivered to the Clerk of the Illinois Pollution Control Board the original and nine (9) copies of the attached MOTION TO CONSOLIDATE FOR PURPOSE OF DECISION, and SECOND WAIVER OF DECISION DEADLINE for filing in this action, with one (1) copy for delivery to Hearing Officer Halloran. I hereby certify that true and accurate copies of these documents and this Notice are being served upon attorney for the Respondent at the address shown above, by depositing it in the U.S. Mail in Chicago, Illinois, with First Class Postage prepaid, on this date.

  
Thomas W. Daggett  
Attorney for Petitioner FedEx Ground

DAGGETT LAW FIRM  
Chicago Title Tower, Suite 4950  
161 North Clark Street  
Chicago, Illinois 60601  
(312) 960-1600

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PCB 07-012  
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**MOTION TO CONSOLIDATE FOR PURPOSE OF DECISION**

Petitioner, FEDEX Ground Package System, Inc. ("Petitioner"), by its attorney, Thomas W. Daggett of the Daggett Law Firm, respectfully submits this Motion To Consolidate For Purpose of Decision to the Board, in accordance with Board rules at 35 Ill. Adm. Code 101.406 and 35 Ill. Adm. Code 101.502, for the reasons set out below.

1. Petitioner filed its Petition for Review of Underground Storage Tank Fund Reimbursement Determination in this matter on August 21, 2006, and the Board accepted it for hearing on September 7, 2006.

2. Respondent IEPA filed a motion for summary judgment in this matter on September 1, 2006; Petitioner filed its Response in Opposition on September 18, 2006; and Respondent filed a Motion for Leave to File Reply instanter September 27, 2006; these motions remain pending before the Board. Petitioner has committed to file its own cross-motion for summary judgment by December 15, 2006, as reported in the November 16, 2006 Hearing Officer's Order in this matter.

3. In searching all prior decisions on the Board's website to prepare its brief opposing the Respondent's summary judgment motion, Petitioner has determined that the legal issue presented is apparently a matter of first impression before the Board.

4. Petitioner's search revealed, however, that another Petition for Review of Underground Storage Tank Fund Reimbursement Determination by an unrelated entity, currently pending before the Board, raises the same legal issue, with certain different factual details, *Broadus Oil v. IEPA* (Consolidated: PCB 04-31 and 05-43). In that case, cross-motions for summary judgment have been filed; Respondent filed a motion for Leave to File Reply instanter on September 28, 2006, the day after its similar motion in this *FedEx* case. In its November 16, 2006 meeting, the Board referred the *Broadus* summary judgment motions to deliberative session.

5. Section 101.406 of the Board procedural rules provides:

"The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. 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."

6. In accordance with Rule 101.406, Petitioner FedEx respectfully moves the Board to consolidate this matter with *Broadus Oil v. IEPA* (Consolidated: PCB 04-31 and 05-43) for purposes of decision only. Denial of this motion could cause extreme material prejudice to Petitioner FedEx because the Board could rule upon the relevant legal issue of first impression in the *Broadus* case before it reviews FedEx's legal arguments in its cross-motion for summary judgment, which is due to be filed by December 15, 2006.

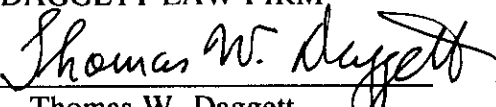
7. Granting this Motion would be convenient and expeditious. It might briefly delay its initial decision on an important legal issue of first impression, but it would provide the Board a more complete briefing of the legal issues, and additional factual circumstances to use in explaining its interpretation of the regulation at issue to IEPA and the regulated community in its consolidated Opinion.

8. Decision Deadline Waivers have been filed in both this *FedEx* case (to May, 2007) and the *Broadus* case (to April, 2007) sufficient to allow the Board to grant this motion and issue a consolidated decision on the cross motions for summary judgment without need to set hearings in either case. Petitioner believes it unlikely that either case will go to hearing, and it is not moving for consolidation for the purpose of hearing.

9. Petitioner has conferred with the attorney for Petitioner in *Broadus v. IEPA*; from that discussion, we understand that Broadus is in agreement with this motion and will be filing a similar motion in *Broadus v. IEPA* in the near future.

Respectfully submitted,

FEDEX Ground Package System, Inc.  
By DAGGETT LAW FIRM,

  
Thomas W. Daggett

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**SECOND WAIVER OF DECISION DEADLINE**

Petitioner, FEDEX Ground Package System, Inc. ("Petitioner"), by its attorney, Thomas W. Daggett of the Daggett Law Firm, hereby waives its right to receive the Board's decision on its Petition in this matter by the statutory decision deadline for an additional sixty (60) days, to be added to end of the ninety (90) day waiver it filed in this matter on September 28, 2006.

Respectfully submitted,

FEDEX Ground Package System, Inc.  
By DAGGETT LAW FIRM

  
Thomas W. Daggett

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