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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

NOV 3 2003

STATE OF ILLINOIS
Pollution Control Board

VOGUE TYRE & RUBBER COMPANY,)

Petitioner,)

v.)

PCB No. 96-10

(UST Appeal)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)

Respondent.)

NOTICE OF FILING

TO: Ms. Dorothy Gunn, Clerk of the Board
Illinois Pollution Control Board
State of Illinois Building
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601

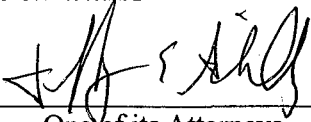
Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
State of Illinois Building
100 W. Randolph Street - Suite 11-500
Chicago, Illinois 60601

John J. Kim
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that on November 3, 2003, we filed with the Office of the Clerk of the Pollution Control Board Vogue Tyre & Rubber Company's Response to Motion for Reconsideration, a copy of which is attached hereto and hereby served upon you.

David M. Allen
Jeffrey E. Schiller
Schuyler, Roche & Zwirner
130 East Randolph, Suite 3800
Chicago, IL 60601
David M. Allen
(312) 565-2400

VOGUE TYRE & RUBBER COMPANY

By: 
One of its Attorneys

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**ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY,**)

Respondent.)

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PETITIONER'S RESPONSE TO MOTION FOR RECONSIDERATION

Petitioner, Vogue Tyre & Rubber Company ("Vogue"), by its attorneys, and pursuant to the relevant rules of the Illinois Administrative Code, files this Response to Respondent's Motion for Reconsideration within 14 days of receipt of said Motion. Vogue received service of the Motion for Reconsideration on October 20, 2003.

DISCUSSION

Vogue has little to add to the Order entered by the Board on September 4, 2003, other than to say that the Illinois Environmental Protection Agency ("IEPA") has mischaracterized Vogue's position with regard to the existence of disputed facts of this case. While Vogue admitted, in its Response to Motion for Summary Judgment, that "[b]y and large, the essential facts pertinent to this case are not in dispute", some facts do remain at issue. For example, the IEPA's decision to place Vogue's motives at issue in its Motion for Summary Judgment creates a clear issue of factual dispute. It was the IEPA which asserted in its Motion that Vogue should not be "rewarded" for discovering and remediating the pollution in question, because, by implication, Vogue should have discovered the leak earlier and remediated upon such discovery. Vogue strenuously objects to that characterization and is prepared, at hearing, to demonstrate that it acted appropriately and promptly.

In all other respects, Vogue believes that the Board's Order of September 4, 2003 is correct, and that the IEPA's Motion for Summary Judgment did not fulfill the procedural requirements. Should the IEPA reassert its Motion and include Affidavits, Vogue will respond at that time. However, Vogue is not required to dispute Affidavits which have not yet been presented to avoid summary judgment. Accordingly, Vogue prays that this Board deny the IEPA's Motion for Reconsideration.

Respectfully submitted,

VOGUE TYRE & RUBBER COMPANY

By: 

One of its Attorneys

David M. Allen
Jeffrey E. Schiller
Schuyler, Roche & Zwirner, P.C.
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Chicago, Illinois 60601
(312) 565-2400

CERTIFICATE OF SERVICE

I, Jeffrey E. Schiller, one of the attorneys for Vogue Tyre & Rubber Company, certify that I caused copies of the foregoing Response to Motion for Reconsideration to be served by hand-delivery before the hour of 4:30 p.m., to:

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

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

and by depositing same in the United States Mail, first class postage prepaid, at One Prudential Plaza, 130 East Randolph Street, Chicago, Illinois, to:

John J. Kim
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

on this 3rd day of November 2003.

