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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD CLERK'S OFFICE

SEP 24 2003

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 NATIONAL MATERIALS L.P., an )  
 Illinois limited partnership, )  
 d/b/a NATIONAL LAMINATION )  
 COMPANY, and NM HOLDING, INC., )  
 a Nevada corporation, )  
 )  
 Respondents. )

No. PCB 01-02

(Enforcement - Air)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 24th day of September, 2003, I filed with the Clerk of the Illinois Pollution Control Board a Response to Respondents' Motion to Amend the Discovery Schedule, copies of which are attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General of the  
State of Illinois

By: Paula Becker Wheeler

PAULA BECKER WHEELER  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Fl.  
Chicago, Illinois 60601  
(312) 814-1511

Date: September 24, 2003

THIS FILING IS SUBMITTED ON RECYCLED PAPER.

SERVICE LIST

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

Dorothy M. Gunn  
Clerk of the Illinois Pollution Control Board  
100 W. Randolph  
Suite 11-500  
Chicago, IL 60601

Michele Sibley Gonzales  
Holland & Knight, LLC  
181 S. Dearborn Street, 30<sup>th</sup> Floor  
Chicago, IL 60603

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COMPLAINANT'S RESPONSE TO RESPONDENTS' MOTION TO AMEND THE  
 DISCOVERY SCHEDULE

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, responds to Respondents' Motion to Amend the Discovery Schedule by stating the following facts:

1. On July 2, a Hearing Officer Order was entered setting the discovery dates on the case instanter. All written discovery was to be served on or before July 21, 2003; all responses to written discovery to be served on or before August 29, 2003; depositions of all non-experts to be completed by October 17, 2003 and so forth.

2. Complainant served written discovery to Respondents consisting of both a Request to Produce Documents and Interrogatories on July 21, 2003, pursuant to the Hearing Officer Order.

3. On or around July 21, 2003, a further status call was

held, with the Respondents' attorney and the Hearing Officer participating by teleconference. At that time, both attorneys representing the parties stated to the Hearing Officer that discovery was proceeding. To today's date, Complainant has neither received any written discovery to respond to, nor received any answers to the discovery served on Respondents on July 21, 2003.

4. During the teleconference with the Hearing Officer on or around July 21, 2003, Respondents further stated that they would send the necessary information to submit an inability to pay claim on a penalty amount. The list of specific documents needed to show the claim was faxed to the Respondents on June 4, 2003.

5. To date, Complainant has not received any documents pursuant to the June 4, 2003 fax. On September 17, 2003, the last status date with the Hearing Officer, Respondents finally stated that they would not be submitting any documents and were withdrawing the request to consider their inability to pay claim.

6. On or around September 11, 2003, in preparation for a possible Motion to Compel and in view of the upcoming status date, Complainant's attorney called the Respondents' attorney to inquire about answering the outstanding discovery. The answers, at that point, were two weeks overdue.

7. During the September 11, 2003, conversation,

Respondents' counsel, in essence, said she forgot to tender discovery by July 21, 2003 as required by the Hearing Officer Order, and that she would answer Complainant's discovery by the end of the next week.

8. No calls were made to the Complainant's attorney about requesting extensions on discovery, not on July 21, 2003, nor August 29, 2003, deadlines that are long past. The only call about discovery was made by Complainant's counsel.

9. Even taking all of the Respondents' statements as true, they have not given any reasonable explanation for their failure to propound discovery to Complainant, complete answers to properly served discovery, or failure to contact Complainant requesting an extension of time on July 21st, or August 29<sup>th</sup>, or any other time.

10. Respondents' attorney makes no argument showing good cause for the delay, as is required by Section 101.522 of the Procedural Rules and Regulations of the Illinois Pollution Control Board, 35 Ill. Adm. Code 101.522. Excuses about office moves in March are not relevant to missed deadlines in July and August, especially when the time of the first missed deadline coincides with assurances to the Hearing Officer that discovery is proceeding.

11. Respondents further argue that there is no prejudice to Complainant. Whether or not there is a lack of prejudice to the

opposing party because of the delay does not constitute good cause for failure to respond. See Moy v. Ng, 793 N.E.2d 919, 276 Ill.Dec. 160, Ill.App. 1 Dist., June 30, 2003.

12. Respondents make no argument that even attempts to indicate good cause. The only possible reason for the failure to propound discovery is an attempt to cause unnecessary delay of the case.

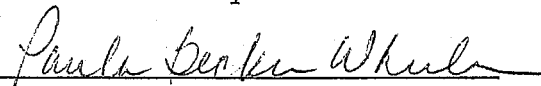
Wherefore, Complainant, PEOPLE OF THE STATE OF ILLINOIS, requests that Respondents' Motion to Amend the Discovery Schedule be denied.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

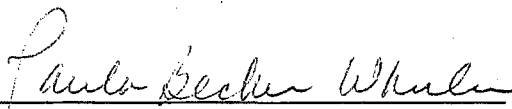
By: 

PAULA BECKER WHEELER  
Assistant Attorney General

Environmental Bureau  
188 W. Randolph, 20<sup>th</sup> Fl.  
Chicago, Illinois 60601  
(312) 814-1511

CERTIFICATE OF SERVICE

I, Paula Becker Wheeler, an Assistant Attorney General in this case, do certify that I caused to be served this 24th day of September, 2003, the foregoing Response to Respondents' Motion to Amend the Discovery Schedule and Notice of Filing upon Michele Sibley Gonzales by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 188 West Randolph Street, Chicago, Illinois, and upon Dorothy M. Gunn and Bradley P. Halloran by hand delivery to the addresses on the Notice, at or before the hour of 5:00 p.m.

  
\_\_\_\_\_  
PAULA BECKER WHEELER