

**BEFORE THE POLLUTION CONTROL BOARD**

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STATE OF ILLINOIS  
Pollution Control Board

BF GOODRICH COMPANY, )  
(HENRY FACILITY), )  
Petitioner, )  
)  
v. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

**PCB 91-17**  
**(NPDES Permit Appeal)**

**NOTICE OF FILING**

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

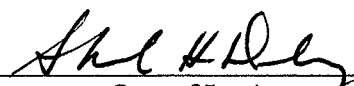
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Illinois Pollution Control Board  
James R. Thompson Center  
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Suite 11-500  
Chicago, IL 60601

**PLEASE TAKE NOTICE** that on Monday, February 2, 2004, we filed the attached **Pre-Hearing Memorandum** with the Illinois Pollution Control Board, a copy of which is herewith served upon you.

Respectfully submitted,

NOVEON, INC.

By:   
One of Its Attorneys

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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Noveon, Inc. )  
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v. ) PCB 91-17  
) (Permit Appeal)  
Illinois Environmental )  
Protection Agency )

STATE OF ILLINOIS  
Pollution Control Board

**PRE-HEARING MEMORANDUM**

Noveon, Inc., f/k/a The BFGoodrich Company ("Noveon"), through its undersigned attorneys and as requested by the Hearing Officer's Order dated November 6, 2003, respectfully submits this Pre-Hearing Memorandum in support of its appeal of NPDES Permit No. IL0001392. Noveon requests that the Board remand the permit to rescind the effluent limit for ammonia which the Illinois EPA erroneously included based on the provisions of 35 Il. Adm. Code 304.122. Noveon also requests that the separation of outfalls imposed by this permit for testing and monitoring purposes be reversed and remanded; that the toxicity testing and biomonitoring required by the permit be rescinded, and that the Board remand the permit for reconsideration of the manner of applicability of federal regulations governing discharges from the Organic Chemicals, Plastics, and Synthetic Fiber (OCPSF) facilities.

**BACKGROUND**

*Noveon, Inc. and PolyOne*

Noveon's Henry Plant is located in Henry, Illinois in northwestern Marshall County. The facility was solely owned and operated by the BFGoodrich Company from its initial construction in 1958 until 1993. In 1993, the BFGoodrich Company divested the Geon Vinyl Division from the company and formed The Geon Company ("Geon"), a separate, publicly held company with operations at a number of locations, including at a portion of the Henry Plant. In February 2001,

the BFGoodrich Company sold all the assets of its chemical business, including the Henry Plant, and that former BFGoodrich division is now a separate company known as Noveon, Inc.

Today, both Geon (now known as PolyOne) and Noveon continue to operate separate and distinct facilities at the Henry site. The Noveon Henry Plant produces rubber accelerators and antioxidants for the rubber, lubricant and plastic industries. The rubber accelerators are used in tires and other rubber goods to “accelerate” the curing process. The antioxidants are used to inhibit the oxidation process in materials such as rubber, jet fuel, greases, oils and polypropylene. Noveon also produces personal care related products at the Henry Plant.

At its portion of the Henry Plant, PolyOne produces polyvinyl chloride (“PVC”) resins. These resins are sold to a variety of customers including those in the construction, household furnishings, consumer goods, electrical, packaging and transportation industries. While PolyOne is not a party to this proceeding, its process wastewater is combined with the Noveon wastewater and treated in the Henry Plant’s wastewater treatment system, which is owned and operated by Noveon.

In the production of accelerators there are several key raw materials: sulfur, aniline, carbon disulfide and amines. The manufacture of accelerators is a multi-step process including the manufacture of an intermediate (sodium mercaptobenzothiazole). This intermediate is then reacted with an amine and other raw materials to form an accelerator product. The product is then isolated through filtration and drying. There are various types of antioxidants manufactured by Noveon at the Henry Plant. In general, the antioxidant processes utilize either diphenylamine or one of several phenols as a starting material. The processes in which these products are manufactured consist of both batch and continuous reactors, filtration operations and solidification. Ammonia is not a primary ingredient in any of the processes carried out by either

Noveon or PolyOne nor in the products either company produces. Ammonia is not used in any significant amount in the processes conducted by either Noveon or PolyOne that are the source of discharges to the wastewater treatment plant.

#### *The Wastewater Treatment Facility*

The wastewater treatment system at the Henry Plant is a complex multi-process system that treats both process wastewater and non-process discharges including stormwater and non-contact cooling water. Pretreatment of certain process wastewaters is the initial step in the treatment process. The Cure-Rite 18<sup>®</sup> wastewater is pretreated with hydrogen peroxide. Some of the PVC wastewater from PolyOne is pretreated by a wastewater stripping system that removes residual vinyl chloride. PolyOne also pretreats certain centrate waste streams prior to discharge to the Henry Plant's wastewater treatment system.

Following pretreatment, all process wastewater is collected in equalization tanks prior to transfer to the primary treatment system followed by the primary clarifier. After primary clarification, the wastewater is sent to activated sludge treatment, to the secondary clarifier, and then to tertiary treatment. The non-process wastewater, including non-contact cooling water, stormwater, water from the boilerhouse demineralizer and water treatment works, is discharged to a holding pond. The non-process wastewater is then either pumped into the primary treatment system or pumped directly to the sand filter to remove solids prior to discharge through the outfall.

#### *Discharge of Treated Effluent*

The treated wastewater is discharged through Outfall 001 to the Illinois River through an 18-inch, single-port submerged diffuser into the main channel of the Illinois River. The Illinois River is formed at the junction of the Kankakee and Des Plaines Rivers near Joliet, Illinois and

runs 273 miles west, southeast and south to the Mississippi River, near Grafton, Illinois, which is a few miles upstream from St. Louis. The Henry Plant is located between river mile 198 and 199. The Illinois River at Henry is approximately 875 feet wide, with an approximate 18 foot maximum depth. The average depth of the river is 11 feet, and it has a drainage area of approximately 13,543 square miles at Henry, IL. The USGS has operated a gauging station at Henry, Illinois since October 1981. The available USGS data for this gauge indicate that the Illinois River at this location has an annual mean flow of 15,340 cfs. The Illinois State Water Survey reports an annual 7-day, 10-year low flow for the river at Henry of 3,400 cfs. Since the Henry Plant sits 40 to 50 feet above the Illinois River, the effluent enters the river with a great deal of velocity. This velocity causes rapid and immediate mixing, resulting in maximum effluent concentration reductions. The discharge is of sufficient turbulence to discourage habitation by aquatic organisms in the area of the diffuser.

The effluent from the Henry Plant historically has had an ammonia nitrogen concentration ranging from 23 to 150 mg/L.<sup>1</sup> As a result of the various studies conducted by and on behalf of Noveon, it has been determined that ammonia is generated as a degradation product of the Henry Plant's wastewater treatment system. In particular, the degradation of amines in the wastewater treatment process produces the ammonia found in Noveon's effluent.

*Renewal of the Noveon NPDES Permit at Issue in this Proceeding*

On August 30, 1989, Noveon submitted a renewal application for NPDES Permit No. IL0001392, governing the wastewater discharge from the Henry Henry Plant. By letter dated December 28, 1990, the Illinois Environmental Protection Agency ("Agency") re-issued a final

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<sup>1</sup> In sampling by EA Engineering, one sample did exceed this range, but that sample appears to have been an anomaly.

NPDES permit for the Henry Plant. In response to the re-issued NPDES permit, on January 24, 1991, Noveon initiated this timely permit appeal (PCB 91-17).

Two days of hearing were conducted on the permit appeal, but the hearing was stayed prior to Noveon's completing its case in chief because Noveon's expert witnesses was unexpectedly ill and unable to participate at that time. Subsequently, Noveon and the Agency entered into negotiations to resolve the appealed issues. Noveon had lengthy discussions with the Agency, and the parties agreed that the appropriate course of action would be for Noveon to file a variance petition with the Board as to one issue, the permit's effluent limitation applicable to ammonia nitrogen, to allow the Henry Plant to reduce the levels of ammonia in its wastewater discharge. The variance petition was filed but it was subsequently withdrawn due to Noveon's conclusion that a variance would not be the appropriate vehicle for Noveon to obtain relief. Noveon's studies have concluded that compliance with the standard is not economically reasonable or technically feasible. Accordingly, Noveon concluded that it was appropriate to also seek an adjusted standard from the Board for the ammonia issue raised in the permit appeal in the event the permit appeal is unsuccessful.

#### *Issues Presented by Appeal*

There are four issues presented by Noveon's permit appeal. The first issue concerns the inclusion of ammonia nitrogen effluent limitations that had not been included before in any of the previously issued Henry Plant NPDES permits. (This question is related to the issue in the contemporaneous Adjusted Standard proceeding should the Board rule that 35 Ill. Adm. Code 304.122 was properly applied to Noveon's NPDES Permit).

At issue in this proceeding is also the question of whether Noveon's discharge should properly be characterized as two outfalls. In the Permit, the Agency characterized the outfalls as

Outfall 001 and Outfall 001A. Noveon contends that there is only one outfall. This is true both of the physical nature of the outfall and of the treatment system. The discharge is from one treatment system, and that treatment system is receiving the best degree of treatment, as that term is defined in Illinois regulations, which means one outfall is appropriate.

The third issue on appeal is the requirement encompassed in Special Condition Six that Noveon undertake biomonitoring and toxicity studies. Noveon has undertaken several toxicity studies that will be presented at the hearing. Based on these studies Noveon believes that further toxicity testing and ongoing biomonitoring have not been justified by the record.

The final issue on appeal concerns application of federal rules governing discharges from OCPSF facilities. Noveon contends that the Agency has misinterpreted these rules. First, it improperly relied upon a monthly average flow to calculate the daily maximum mass limitation. This is an incorrect interpretation of how OCPSF limits are derived. Second, the Agency erred in imposing concentration limits for various parameters, because the OCPSF regulations call for mass limitations.

## DISCUSSION

### **A. Ammonia Effluent Limitations**

Special Condition 4 in the NPDES Permit states as follows:

The permittee shall monitor ammonia as N and report the lbs/day discharged. If the 30 day average exceeds 100 lbs/day then the effluent concentration shall not exceed 3 mg/L on a 30 day average basis. If the daily maximum exceeds 200 lbs/day then the effluent concentration shall not exceed 6 mg/L on a daily basis.

Illinois EPA based this condition on 35 Il. Adm. Code. § 304.122(b), which provides as follows:

Sources discharging to [the Illinois River, the Des Plaines River downstream of its confluence with the Chicago River

System or Calumet River System] and whose untreated waste load cannot be computed on a population equivalent basis comparable to that used for municipal waste treatment plants and whose ammonia nitrogen discharge exceeds 45.4 kg/day (100 pounds per day) shall not discharge an effluent of more than 3.0 mg/L of total ammonia nitrogen as N.

Id.

*i. Background of 35 Ill. Adm. Code 304.122*

On January 6, 1972, the Board adopted Rule 406 of its water pollution rules, which limited the ammonia nitrogen level of certain dischargers to the Illinois River. That rule has since been amended and is now codified at 35 Ill. Adm. Code 304.122. The rule as promulgated was specifically intended to reduce the discharge of ammonia nitrogen to the Illinois River from large dischargers because at the time of adoption it was believed that those dischargers were impacting dissolved oxygen at some locations in the river:

The State Water Survey has conclusively shown that reduction of ammonia from the larger sources feeding the Illinois River is necessary if existing standards for dissolved oxygen, essential to an adequate fish population, are to be met. This is exactly the sort of testimony that is required . . . in order to assure that the water quality standards are complied with.

In the Matter of Effluent Criteria, R70-8, p. 12 (Jan. 6, 1972). The record in R70-8 shows that the basis of the Board's statement regarding the Water Survey's "conclusive showing" was a study entitled Dissolved Oxygen Resources and Waste Assimilative Capacity of the LaGrange Pool, by Butts, Schnepfer and Evans of the Illinois Water Survey.

Subsequent to the promulgation of the effluent standard for certain discharges into the Illinois River, additional studies demonstrated that a key assumption of the original study was incorrect. The earlier study assumed that the total oxygen demand upon the LaGrange Pool was the sum of the nitrogenous and carbonaceous oxygen demands. Later studies demonstrated that



there is a third oxygen demand upon the pool, that being the sediment oxygen demand and that this demand is the significant one. See, e.g., Butts, Evans and Lin Water Quality Features of the Upper Illinois Waterway (1975); Butts Water Quality Assessment and Waste Assimilative Analysis of the LaGrange Pool, Illinois River (1981) and Butts The Impact of the Greater Peoria Sanitary District Ammonia Discharges on Illinois River Water Quality (Nov. 1985). Because of that, the relative impact of the ammonia nitrogen discharges upstream of the Pool on the dissolved oxygen levels in the Pool had been greatly overestimated in the original study. Notwithstanding the change in the underlying scientific basis for the ammonia nitrogen effluent limit, 35 Ill. Adm. Code 304.122 remained in the Board's regulations as ammonia nitrogen effluent limitations.

ii. *Historical Application of Rule 304.122: Estoppel*

Notwithstanding these studies and the absence of a prior ammonia nitrogen limitation in Noveon's permit, the Agency included an ammonia nitrogen effluent limit in the permit at issue in this proceeding. During the mid-1970's the Agency did raise the applicability of 35 Ill. Adm. Code 304.122(b) in a draft NPDES Permit for the Henry Plant, only to remove the proposed ammonia effluent limit and issue a permit without this condition. Nothing has changed with respect to the discharge from the Henry Plant that would warrant a change in that Agency decision regarding the applicability of this section. Subsequent to the Agency's removal of the ammonia limit, Noveon made decisions with respect to the plant and its operations based on the inapplicability of Rule 304.122. When the Agency attempted to apply the Rule again in the permit at issue, no reason was given for the change in the Agency's position.

Noveon believes that the Agency's action and Noveon's reasonable reliance on it meets the elements of estoppel under the law. The absence of any adverse impact to health or safety if the rule is not applied further supports estoppel in this case.

*iii. Applicability of the Rule*

The Agency claimed that the inclusion of an ammonia nitrogen effluent limitation was based on the regulatory requirements of 35 Ill. Adm. Code 304.122(b). But by the specific terms of this provision, an effluent limit applies only to sources "whose untreated waste load cannot be computed on a population equivalent basis comparable to that used for municipal waste treatment plants." Id.

It is the Agency's position that Noveon's untreated waste load cannot be computed on a population equivalent basis comparable to that used for municipal waste treatment plants. The Agency's position is based on its assertion that, while a population equivalent basis can be computed for Noveon's untreated waste load, that waste load is not comparable to the waste load of municipal waste treatment plants. Noveon respectfully disagrees with the Agency's reading of the rule, which is not consistent with the explicit terms of the rule. The Agency has imposed on the rule a requirement, that the waste loads be comparable, which is not present in the plain language of the rule itself. Noveon believes the term "comparable" in the rule modifies the term "population equivalent basis." The purpose of population equivalents is to describe the relative size of a wasteload in terms that one can easily relate to and not to describe the treatment characteristics of the wasteload.

Noveon believes that Section 304.122(b) is not applicable because Noveon's untreated waste load can be computed on a population equivalent basis comparable to that used for municipal waste treatment plants. If one based this calculation on flow, BOD, and TSS, as the

Agency contends is proper, the correct calculation is, respectively, 916, 19,412, and 24,955 population equivalents. Further, although not a part of the definition of population equivalents, a population equivalents basis can also be calculated based on ammonia nitrogen and Total Kjeldahl Nitrogen (TKN), which results in values of 20,263 and 35,793, respectively. Since Noveon's untreated waste load can be computed on a population equivalent basis comparable to that used for municipal waste treatment plants, and the calculation results in a population equivalent less than 50,000, the Agency was therefore without basis to include the ammonia nitrogen limitation in this provision in Noveon's NPDES Permit.

Further, because Noveon's untreated waste load can be computed on a population equivalent basis comparable to that used for municipal waste treatment plants, and because that waste load is less than 50,000 population equivalents, Noveon believes that 35 Ill. Adm. Code 304.122(a) also does not apply, and does not provide a basis for including an effluent limitation for ammonia in the NPDES Permit. This provision reads as follows:

No effluent which discharges to the Illinois River, the Des Plaines River downstream of its confluence with the Chicago River System or the Calumet River System, and whose untreated waste load is 50,000 or more population equivalents shall contain more than 2.5 mg/L of total ammonia nitrogen as N during the months of April through October, or 4 mg/L at other times.

Consequently, 35 Ill. Adm. Code 304.122 provides no justification for the inclusion of an ammonia nitrogen effluent limit in the permit issue.

*iv. Compliance with Water Quality Standard*

With an appropriately calculated zone of initial dilution ("ZID") and mixing zone, consistent with both Agency and U.S. EPA guidance on mixing zones, the discharge from the Henry Plant will meet the summer/winter acute and chronic limitations set forth in the amended

ammonia water quality standards. In Illinois water quality standards must be met at the 7Q10 low flow condition. Historical river data has been analyzed by Noveon from various monitoring stations, including the Agency's Hennepin, IL and United States Geological Survey ("USGS") Henry, IL monitoring stations to determine appropriate ambient river parameters to determine an appropriate mixing zone. Field studies have been conducted on the Henry Plant's discharge to analyze the in-river mixing taking place. According to the analysis arising from those field studies, based on a computed total cross-sectional area, and a maximum plume width of 160 feet in the river, the effluent plume will require less than 18% of the cross-sectional area of the total 875 foot width of the Illinois River in the vicinity of the Henry Plant for a mixing zone. In addition, the 26-acre limitation on mixing zones is easily met by the discharge from the Henry Plant. The size of the ZID calculated by Noveon's consultant is 66.5 feet, with a mixing zone of a 1,000 feet. This ZID and mixing zone will allow the effluent from the Henry Plant to meet both the summer (April through October) and winter (November through March) acute and chronic water quality standards at total ammonia nitrogen effluent discharge limits of no greater than 189 mg/L for winter and for summer.

#### **B. Separation of Outfalls**

The second issue on appeal is the proposed separation of outfalls prior to sampling. The Agency has designated two sample points in the NPDES permit: Outfall 001 and Outfall 001A, instead of the single sampling point currently used. Special Conditions 5 and 7 read as follows:

Special Condition 5: For the purpose of this permit, outfall 001 is limited to process wastewater and will serve as an alternate route for waters discharged normally to outfall 001a. The discharge will be free from other wastewater discharges. Sampling for the monitoring requirements for the discharge shall be taken prior to mixing with the discharge from outfall 001a.

Special Condition 7: For the purpose of this permit, outfall 001a is limited to stormwater, non-contact cooling water, lime softening and demineralization waste, free from process and other waste water discharges. Sampling for the monitoring requirements for this outfall shall be performed at a point representative of the discharge but prior to mixing with the discharge from outfall 001.

Noveon contends that this separation is inconsistent with the Board's regulations and not consistent with the nature of the discharge. There is physically one outfall and only one discharge to the Illinois River. All of the wastewater streams in the plant are combined and sampling occurs at a point immediately before the discharge to the Illinois River.

The current sampling point is entirely consistent with Board regulations. Section 304.102 allows such a sampling point if the permittee is providing the best degree of treatment. Putting aside ammonia, which will be resolved in some fashion by the Board in this proceeding or the pending Adjusted Standard proceeding, there is no dispute that Noveon is providing the best degree of treatment. This therefore means that under Section 304.102, waste streams from the facility can be combined. The sampling point has been previously approved by Illinois EPA in permits issued before the one subject to this proceeding.

### **C. Toxicity Testing**

Noveon has also appealed the condition in the permit that requires Noveon to perform certain acute toxicity testing and other biomonitoring. Special Condition 6 states as follows:

SPECIAL CONDITION 6: The permittee shall prepare a preliminary plan for biomonitoring and submit the plan to IEPA for review and approval within 90 days of the effective date of this permit. The permittee shall begin biomonitoring of the effluent discharge within 90 days after approval of the biomonitoring plan or other such date as contained in the Agency's notification letter.

#### Biomonitoring

1. Acute Toxicity – Standard definitive acute toxicity tests shall be run on at least two trophic levels of aquatic species (fish, invertebrate,) representative of the aquatic community of the receiving stream. Except as noted here and in the IEPA document. “Effluent Biomonitoring and Toxicity Assessment” testing must be consistent with Methods for Measuring the Acute Toxicity of Effluents to Aquatic Organisms EPA-600/4-85-013. Unless substitute tests are pre-approved; the following tests are required:
  - a. Fish - 96 hour static LC<sub>50</sub> Bioassay using one to four week old fathead minnows (*Pimephales promelas*).
  - b. Invertebrate 48-hour static LC<sub>50</sub> Bioassay using *Ceriodaphnia*.
2. Testing Frequency – The above tests shall be conducted on a monthly basis for six months within 90 days following approval of the biomonitoring plan or other such date as contained in the Agency’s notification (approval) letter. Results shall be reported according to EPA/600/4-85/014, Section 10, Report Preparation, and shall be submitted to IEPA within 1 week of becoming available to the permittee.

Concurrent with at least one of the above tests, the permittee shall monitor for the priority pollutants identified in Appendix B of 40 CFR 403.

Should the results of two months of sampling indicate toxicity for each month, the permittee should re-evaluate whether additional sampling is warranted. The Agency should be contacted at that time.

Toxicity Assessment – Should the review of the results of the biomonitoring program identify toxicity, the Agency may require that the permittee prepare a plan for toxicity reduction evaluation and identification. This plan shall include an evaluation to determine which chemicals have a potential for being discharged in the plant wastewater, a monitoring program to determine their presence or absence and to identify other compounds which are not being removed by treatment, and other measures as appropriate. The permittee shall submit to the Agency its plan for toxicity reduction evaluation within 90 days following notification by the Agency. The permittee shall implement the plan within 90 days or other such date as contained in a notification letter received from the Agency.

This condition would essentially require that Noveon conduct extensive investigation to determine what is “toxic” in its effluent and if any of those parameters exist, conduct an investigation to reduce or treat those parameters. Noveon has already performed extensive

investigation, and further testing is unwarranted and duplicative. Noveon believes that this requirement for additional testing is not necessary in light of the fact that Noveon has sought a mixing zone and ZID, and there will be adequate mixing so that Noveon's discharge will not cause any violation of water quality standards downstream of the plant. Therefore, Noveon believes this condition should be deleted and the Agency should be directed to consider the need for it in light of the mixing zone and the ZID.

**D. Mass Limits for OCPSF Chemicals**

The permit also included load (or mass) limits and concentration limits for each of the chemical parameters in the OCPSF regulations promulgated by U.S. EPA and found at 40 CFR Part 414. Noveon believes that Agency's calculation of these limits was erroneous based on the facility's average monthly flow rather than maximum flow, resulting in a limit that does not account for those fluctuations in flow that fall above the average and is therefore likely to result in exceedances.

The OCPSF regulations provide a calculation for "quantity (mass) determined by multiplying the process wastewater flow subject to this subpart times the concentration" listed in the applicable table, and each table provides maximum daily and monthly averages. See, e.g., 40 CFR §§ 414.81, 414.91. So the regulations provide direction to look at a concentration list for a given parameter, determine the process flow for the specific process, and use a factor to determine the mass limitation for that process. Although Noveon provided maximum flow to the Agency, it used the average flow to calculate the monthly average. The Agency used a concentration limit for a 30 day average for each chemical parameter and multiplied that by the 30 day average flow, resulting in a number not representative of the Henry Plant's actual discharge.

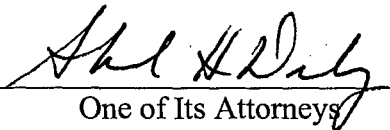
Effluent limits in permits are intended to set a ceiling on discharges of a certain regulated parameter. But effluent limits based on average flow in essence assure an excursion over the limit, because an average flow calculation is not intended to and does not account for normal fluctuations in flow. Noveon's production involves batch processes thus wastewater flow is not even and it fluctuates. If a higher flow occurs where concentration is near that allowed by regulations, an excursion over the load limit could occur.

### CONCLUSION

Noveon requests that the Board remand the permit to Agency to reissue a permit consistent with the plain meaning of 35 Il. Adm. Code § 304.122, which does not authorize imposition of an effluent limit for ammonia. Noveon also requests that the separation of outfalls imposed by this permit for testing and monitoring purposes be reversed and remanded with instructions to issue a permit that requires one testing point consistent with the physical nature of the discharge. Noveon requests that the condition imposing toxicity testing and biomonitoring be deemed duplicative and unnecessary, with directions to rescind it. Finally, Noveon requests reconsideration of the Agency's calculation of mass limits and imposition of concentration limits under the OCPSF regulations.

Respectfully submitted,  
NOVEON, INC.

By:

  
One of Its Attorneys

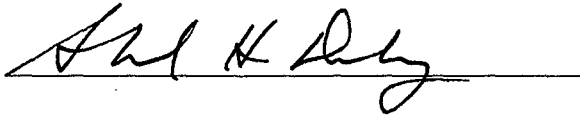
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CH02/22282328.1



**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing **Notice of Filing and Pre-Hearing Memorandum** was filed by hand delivery with the Clerk of the Illinois Pollution Control Board and served upon the parties to whom said Notice is directed by first class mail, postage prepaid, by depositing in the U.S. Mail at 191 N. Wacker Drive, Chicago, Illinois on Monday, February 2, 2004.

A handwritten signature in cursive script, appearing to read "Paul H. Doherty", is written over a horizontal line.

CH01/12236407.1