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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NOVEON, INC. f/k/a BF GOODRICH CORPORATION, (Henry Facility),)
)

Petitioner,)
)

vs.)

PCB 91-17
(NPDES Permit Appeal)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)

Respondent.)

NOTICE OF FILING

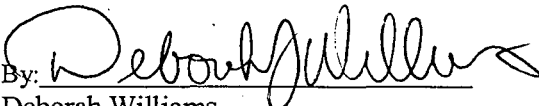
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street,
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Chicago, Illinois 60601

Sheila H. Deely
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191 N. Wacker Drive - Suite
3700
Chicago, IL 60606

Bradley P. Halloran
Hearing Officer
James R. Thompson Center
100 West Randolph Street,
Suite. 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **Response to Motion for Reconsideration and Oral Argument** of the Illinois Environmental Protection Agency, a copy of which is herewith served upon you.

ENVIRONMENTAL PROTECTION AGENCY
OF THE STATE OF ILLINOIS

By: 
Deborah Williams
Assistant Counsel
Division of Legal Counsel

DATED: November 1, 2004

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NOVEON, INC. f/k/a BF GOODRICH
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STATE OF ILLINOIS
Pollution Control Board

RESPONSE TO MOTION FOR RECONSIDERATION AND ORAL ARGUMENT

Now comes the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Deborah J. Williams, Assistant Counsel, pursuant to 35 Ill. Adm. Code 101.520, 101.902 and 101.700 and in response to Noveon, Inc.'s ("Noveon" or "Petitioner") Motion for Reconsideration and Oral Argument states as follows:

On September 16, 2004 the Board ruled on Noveon's National Pollutant Discharge Elimination System ("NPDES") Permit Appeal in the above-captioned docket. In a seventeen (17) page Opinion and Order, the Board sustained Noveon's NPDES permit (IL0001392) as issued by the Illinois EPA on December 28, 1990.¹ On October 20, 2004, Noveon filed the instant Motion asking the Board to reconsider its Opinion in this matter and additionally requesting the Board to grant oral argument.

The purpose of a motion for reconsideration is to bring to the Board's attention newly-discovered evidence which was not available at the time of the hearing, changes in the law or errors in the Board's previous application of the existing law. Vogue Tyre & Rubber Company v. Office of the State Fire Marshal, PCB 95-78 (January 23, 2003),

¹ Noveon filed this appeal of its NPDES on January 24, 1991.

citing to Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 572 N.E.2d 1154 (1st Dist. 1992) and Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 93-156 (March 11, 1993). *See also*, Turlek v. Pollution Control Board, 274 Ill. App. 3d 244, 653 N.E. 2d 1288 (1st Dist. 1995). On its face, Noveon's Motion does not raise new evidence or changes in the law. It simply attempts to readdress arguments already considered and rejected by the Board.

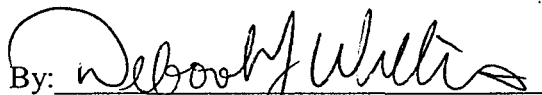
Fortunately Noveon has not attempted to present new facts for the Board's consideration in this matter. It is difficult to conceive of any new facts that could not have been discovered in the intervening decade since this Permit Appeal was initially filed with the Board or during the course of the extensive hearings held over a total of four days in 1991 and 2004. Additionally, Noveon raises no new or existing caselaw or statutory provisions that the Board overlooked or improperly interpreted in its Opinion and Order. Noveon's Motion for Reconsideration has no basis in law or fact beyond the Petitioner's desire to delay even further the effectiveness of a permit lawfully issued by the Agency in 1990.

Noveon has also moved the Board to grant oral argument in this matter pursuant to 35 Ill. Adm. Code 101.700. That provision provides that "[t]he purpose of oral argument is to address legal questions. Oral argument is not intended to address new facts." 35 Ill. Adm. Code 101.700(a). In determining whether to grant oral argument, the Board considers the uniqueness of the issue or conflicts of law. 35 Ill. Adm. Code 101.700(b). Oral Argument is rarely granted by the Board and has never been granted AFTER the Board has issued a final Opinion and Order in a permit appeal. In fact, the Board has only once previously granted a request for oral argument in a permit appeal

proceeding. *See, Prairie Rivers Network v. IEPA and Black Beauty Coal Company*, PCB 01-112 (August 9, 2001). It's not entirely clear why Noveon has requested oral argument in this matter, but it is certainly not to address a complex area of law or conflicting prior Board decisions. If Noveon had felt oral argument was necessary to address an issue of law in this matter, it would have requested such a proceeding at some point during the multiple days of hearings in 1991 and 2004 and in pre-hearing and post-hearing briefs. The fact that Noveon has waited until after the Board's final Order is evidence that Noveon's request is motivated by the goal of delay or in a last ditch effort to reargue its case before the Board.

All the arguments raised in Noveon's Motion were thoroughly addressed by the permit appeal record, hearing testimony, pre-hearing briefs and post-hearing briefs submitted by the parties. The fact that Noveon disagrees with conclusions reached by the Board in this matter is not a basis for a Motion to Reconsider. In reaching its Opinion in this matter it was necessary for the Board to review thousands of pages of documents spanning a period of over thirty years. The Board did so successfully in reaching the correct result under the Environmental Protection Act and Noveon should not be allowed to further delay the effectiveness of the Board's Order.

WHEREFORE, for the reasons stated above, the Respondent, Illinois EPA,
respectfully requests that Petitioners Motion for Reconsideration and Oral Argument be
DENIED.

By: 

Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

DATED: November 3, 2004

Illinois Environmental Protection Agency
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STATE OF ILLINOIS
COUNTY OF SANGAMON

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)
) SS
)
)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **Response to Motion for Reconsideration and Oral Argument** upon the person to whom it is directed, by placing a copy in an envelope addressed to:

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

Sheila H. Deely
GARDNER CARTON &
DOUGLAS LLP
191 N. Wacker Drive - Suite
3700
Chicago, IL 60606
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Bradley P. Halloran
Hearing Officer
James R. Thompson Center
100 West Randolph Street,
Suite. 11-500
Chicago, Illinois 60601
(First Class Mail)

and mailing it from Springfield, Illinois on November 1, 2004 with sufficient postage affixed as indicated above.

Nancy J. Lampert

SUBSCRIBED AND SWORN TO BEFORE ME

This 1st day of November, 2004

Brenda Boehner
Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER