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STATE OF ILLINOIS
Pollution Control Board

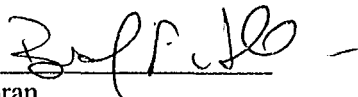
IN THE MATTER OF:)
)
PETITION OF NOVEEN, INC.) AS 02-5
FOR AN ADJUSTED STANDARD FROM) (NPDES Adjusted Standard)
35 ILL. ADM. CODE 304.122)
)

HEARING OFFICER ORDER

On February 6, 2004, petitioner filed a motion to incorporate the transcript of the hearing held on November 19, 1991, in PCB 91-17 into the above-captioned matter. On February 9, 2004, the Illinois Environmental Protection Agency (Agency) filed a response objecting to petitioner's motion to incorporate. Also on February 9, 2004, petitioner filed a motion for leave to reply and a reply. Petitioner's motion for leave to reply is granted. For the reasons set forth below, petitioner's motion to incorporate is denied.

Section 101.406 of the Board's procedural rules states that the Board will not consolidate proceedings where the burdens of proof vary. Allowing the incorporation of the prior transcript begins to approach a consolidation of the proceedings that would otherwise be prohibited by the Board's procedural rules where, as here, the respective burdens for the permit appeal and the adjusted standard petition vary. The Agency argues, and the hearing officer agrees, that incorporation of the transcript will make it necessary for the Agency to call petitioner's witness Ken Willings from the November 1991 hearing for further cross-examination of the current accuracy and relevance of his twelve-year old testimony if it is also to be used as evidence in the above-captioned matter. Moreover, the relevance of all of the material in the permit appeal record has not been demonstrated. The Board should not be burdened with sorting relevant from irrelevant material.

IT IS SO ORDERED.



Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 West Randolph
Chicago, Illinois 60601
312.814.8917

CERTIFICATE OF SERVICE

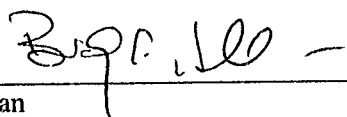
It is hereby certified that true copies of the foregoing order were mailed, first class, to each of the following on February 10, 2004:

Mark Latham
Sheila H. Deely
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Chicago, IL 60610-4795

Deborah J. Williams, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 192276
Springfield, IL 62794-9276

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on February 10, 2004:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
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Chicago, Illinois 60601



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