

FEB 17 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD Pollution Control Board
STATE OF ILLINOIS

IN THE MATTER OF:)
)
Petition of Noveon, Inc. for an)
Adjusted Standard from) AS 02-5
35 Ill. Adm. Code 304.122) (Adjusted Standard – Water)
)

NOTICE OF FILING

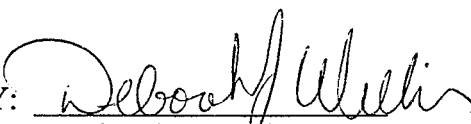
TO: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Mark Latham
Richard Kissel
Gardner, Carton, & Douglas
191 North Wacker Drive, Suite 3700
Chicago, Illinois 60606

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, 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 attached Response of the Illinois Environmental Protection Agency
to Petitioner's Motion to Incorporate Transcript from PCB 91-17 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 J. Williams
Assistant Counsel
Division of Legal Counsel

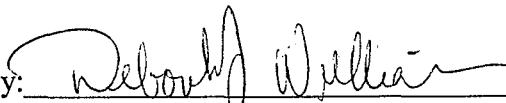
DATED: February 9, 2004
Illinois Environmental Protection Agency
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276

THIS FILING IS SUBMITTED
ON RECYCLED PAPER

entered into the Record. This might make the transcript misleading to the Board when reviewed in the context of an Adjusted Standard proceeding. Incorporation of the transcript will also make it necessary for the Agency to call Petitioner's witness from the Permit Appeal, Ken Willings, for further cross-examination of the current accuracy and relevance of his twelve-year old testimony if it is to also be used as evidence in the Adjusted Standard proceeding.

6. The Board's procedural rules clearly indicate that proceedings must not be consolidated where the burdens of proof vary. *See*, 35 Ill. Adm. Code 101.406. Allowing the incorporation of the prior hearing testimony begins to approach a consolidation of proceedings that would otherwise be prohibited by the Board's rules.
7. At this late date, the Agency can only conclude that its case is will prejudiced by Petitioner's request and respectfully requests that the Hearing Officer deny the instant Motion to Incorporate the Transcript of PCB 91-17 into the Record of AS 02-05.

Respectfully submitted,

By: 
Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

DATED: February 9, 2004

Illinois Environmental Protection Agency
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

STATE OF ILLINOIS

COUNTY OF SANGAMON

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PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached, Response of the Illinois Environmental Protection Agency to Petitioner's Motion to Incorporate Transcript from PCB 91-17, upon the person to whom it is directed, by FACSIMILE and 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

Mark Latham
Richard Kissel
Gardner, Carton and Douglas
191 North Wacker Drive, Suite 3700
Chicago, Illinois 60606

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

and mailing it by First Class Mail from Springfield, Illinois on February 9, 2004 with sufficient postage affixed.

SUBSCRIBED AND SWORN TO BEFORE ME

this 9th day of February 2004

Brenda Boehner
Notary Public

