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FEB - 9 2004

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

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

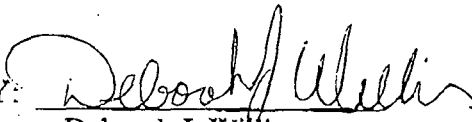
TO: Dorothy Gunn, Clerk  
 Illinois Pollution Control Board  
 James R. Thompson Center  
 100 W. Randolph, Suite 11-500  
 Chicago, Illinois 60601

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

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF:	)	
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	)	

**RESPONSE OF THE ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY TO PETITIONER'S MOTION TO INCORPORATE  
TRANSCRIPT FROM PCB 91-17**

NOW COMES the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA" or "Agency"), by one of its attorneys, Deborah J. Williams, and pursuant to 35 Ill. Adm. Code 101.306, hereby submits its Response to Petitioner's Motion to Incorporate Transcript from PCB 91-17 into the Record of the above captioned matter and states as follows:

1. On May 22, 2002, Noveon filed a Petition for an Adjusted Standard with the Pollution Control Board ("Board"). The Petition requests relief from 35 Ill. Adm. Code 304.122 as these regulations apply to the discharge of ammonia nitrogen from Noveon's Henry, Marshall County, Illinois facility. On June 20, 2002, the Board accepted the Petition for hearing.
2. Hearings in this matter and Noveon's appeal of its National Pollutant Discharge Elimination System Permit (docketed PCB 91-17) were scheduled for February 17 - 20, 2004. Hearings were previously held in PCB 91-17 on November 19, 1991 and December 16, 1991.
3. A Pre-Hearing Status Conference was held before Hearing Officer Halloran on February 5, 2004. On February 6, 2004, Petitioner filed by fax a Motion to incorporate the transcript of the November 19, 1991 permit appeal hearing into the Record of the instant Adjusted Standard proceeding.
4. The Petitioner is providing the Illinois EPA with just four business days to review the November 19, 1991 transcript for its relevance and any other possible objections to its introduction into evidence while simultaneously conducting preparations for the upcoming hearings in these two matters.
5. During the 1991 hearing, Hearing Officer Sikes made at least one ruling that excluded an exhibit and testimony offered by the Agency from being

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

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FEB - 8 2004

STATE OF ILLINOIS  
Pollution Control Board

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

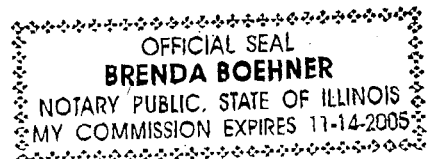
Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

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

*Cynthia Sims*

SUBSCRIBED AND SWORN TO BEFORE ME  
this 9<sup>th</sup> day of February 2004

*Brenda Boehner*  
Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER

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FEB - 9 2004

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, STATE OF ILLINOIS  
DIVISION OF LEGAL COUNSEL, Pollution Control Board  
1021 NORTH GRAND AVENUE EAST, POST OFFICE BOX 19276  
SPRINGFIELD, ILLINOIS 62794-9276  
TELEPHONE (217)782-5544-FACSIMILE (217)782-9807

DATE: 2-9-04

FACSIMILE TRANSMITTAL SHEET

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

PARTY'S NAME: Brad Halloran

FIRM/COMPANY'S NAME: Illinois PCB

FACSIMILE NO.: 312 814 3669

TELEPHONE NO.: 312 814 8917

FROM: Debbie Williams, Illinois EPA

Re: AS 02-05 In the Matter of Novon, Inc.

TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE): 5

HARD COPY WILL  WILL NOT  FOLLOW.

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL 217-782-5544.

COMMENTS: Response to Motion to Incorporate Transcript

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