BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	R2015-024
)	Rulemaking-Water
WATER POLLUTION: PROPOSED)	
AMENDMENTS TO 35 ILL ADM.)	
CODE, PART 309)	

REPORT OF PROCEEDINGS taken before Hearing Officer JASON JAMES, by Lisa K. Hahn, CSR, RMR, a notary public within and for the County of Macon and State of Illinois, at the Illinois Pollution Control Board, 1021 North Grand Avenue East (North Entrance) Springfield, Illinois, on the 25th day of August, 2015, A.D., at 11:00 a.m.

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              MR. GERALD KEENAN
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              MS. ALISA LIU
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    ALSO PRESENT:
                       MR. DARIN LECRONE
                        MS. CAROL WEBB, ESQ.
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    REPORTED BY:
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          Lisa K. Hahn, CSR, RMR
          CSR License No. 084.002149
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August 25, 2015

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1 HEARING OFFICER JAMES: I think it's 2 11:00.

2.1

Good morning and welcome to the Illinois
Pollution Control Board hearing. My name is Jason
James, and I'm the Hearing Officer for the rulemaking
entitled Water Pollution: Proposed Amendments to 35
Ill. Adm. Code, Part 309. The Board docket for the
rulemaking is R15-24.

Also present today from the Board, to my right, is Gerry Keenan, the Lead Board Member for this rulemaking. To my left, Chairman Dr. Deanna Glosser. To my far right, Ms. Alisa Liu, of the Board's technical staff, and Ms. Carol Webb, Hearing Officer for the Board.

As background, the Illinois Environmental Protection Agency filed this rulemaking proposal with the Board on June 1, 2015. The Board accepted the proposal for the hearing on June 4, 2015. The Hearing Officer Order dated June 29, 2015, scheduled this hearing, the first in this rulemaking. That Order also set a deadline of July 24, 2015, to pre-file testimony for this hearing.

The Board received pre-filed testimony on behalf of IEPA's proposal by Mr. Darin LeCrone on

July 24, 2015.

2.1

I entered another Hearing Officer Order on August 14, 2015, posing questions by the Board and Staff for IEPA witnesses, which will be taken up today.

The Illinois Environmental Regulatory

Group, IERG, also pre-filed questions for IEPA's

witness on August 13, 2015. I understand we also

have a written response from IEPA to those questions.

I would like to note for the record that there is a sheet on which anyone who didn't pre-file testimony can indicate they would like to testify today. Also, on that sheet, you can indicate if you'd like to comment here today. I didn't see any names earlier. Are there any now?

HEARING OFFICER WEBB: No.

HEARING OFFICER JAMES: There are none.

This proceeding is governed by the Board's procedural rules. All information that's relevant and that's not repetitious or privileged will be admitted into the record.

Please note that any questions posed today by Board Members or Staff are intended solely to assist in developing a clear and complete record

for the Board's decision and do not reflect any pre-judgment or bias on the proposal.

2.1

We will begin this hearing with pre-filed testimony of IEPA's witness. We will enter that pre-filed testimony into the record as if read.

Next, we will have the witness sworn in and allow him to give a brief summary of the pre-filed testimony that he wishes to. After that, we will turn to questions regarding that witness's testimony.

Anyone may ask questions of IEPA's witness, and any members of the public present will be given first opportunity to pose questions.

The Board, Board Staff, or IERG, then may ask follow-up questions based on pre-filed responses. Please note that the Board may raise additional follow-up questions at the second hearing in this docket scheduled for September 24, 2015.

After the testimony and questions for IEPA's witness, we will allow anyone else to testify, and as time allows, the Board may receive public comments on the proposal.

Towards the conclusion of today's hearing, there will be opportunity for anyone to

Page 7 1 offer testimony on the Board's request that the 2 Department of Commerce and Economic Opportunity, or 3 DCEO, perform an Economic Impact Study on this 4 proposal. 5 For the court reporter transcribing today's proceeding, please speak clearly and avoid 6 7 speaking at the same time as another person, so we 8 can help produce a clear transcript. 9 Does anyone have any questions on the order of proceedings today? 10 11 Seeing none, does the Agency or any Board 12 Member have any opening statements? MS. TERRANOVA: I'm Sara Terranova with 13 14 the Illinois EPA. The Agency at this time, we do not 15 have an opening statement. 16 HEARING OFFICER JAMES: Turning to the 17 Agency's Pre-Filed Testimony, absent any objections, 18 the Pre-Filed Testimony will be entered into the record, as if read, as provided in the June 29, 2015, 19 20 Hearing Officer Order. 2.1 Is there any objection? Seeing none, we 22 will enter the Pre-Filed Testimony into the record as 23 if read.

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Then we will turn to IEPA's Pre-Filed

Page 8 1 Written Responses -- or Written Responses to the 2 Questions. Absent any objection, we will enter the 3 Written Responses to the Questions into the record as 4 if read. Are there any objections? 5 Okay. Seeing none, we will enter the 6 Pre-Filed Responses into the record. 7 MS. TERRANOVA: These are responses to 8 the Board questions and these are responses to IERG. 9 HEARING OFFICER JAMES: Okay. At this time, absent any objection, we 10 will go off the record to review the responses to the 11 12 questions. Seeing no objections, we will go off the 13 record. (Off the record. A brief recess 14 15 was taken.) 16 HEARING OFFICER JAMES: Okay. Back on 17 the record. 18 Ms. Terranova, I believe you've already introduced yourself for the record, but could you 19 20 introduce IEPA's witness for the record so we can 2.1 swear him in and begin? 22 MS. TERRANOVA: Yes. 23 Well, first, before our witness, I also have Stefanie Diers with Illinois EPA's legal 24

Page 9 1 counsel, and Darin LeCrone. He is the industrial 2 manager in the Agency. 3 HEARING OFFICER JAMES: Okay. Would the 4 court reporter please swear in the witness? 5 (Witnesses sworn.) 6 WHEREUPON: 7 DARIN LECRONE, called as a witness 8 herein, having been first duly sworn, deposeth and saith as follows: 9 10 HEARING OFFICER JAMES: Okav. Since we've already admitted the testimony and pre-filed 11 12 responses as if read, we can move directly to the questions, unless anyone has an objection. 13 If there are any public participants that 14 15 wish to ask questions, please let me know, but seeing 16 none, we can begin with questions from the Board and 17 Board Staff. 18 DR. GLOSSER: I have a question. 19 restricting it to their responses or other questions? 20 Can we start with the questions? 2.1 HEARING OFFICER JAMES: Yeah, we can. 22 DR. GLOSSER: I just have a question 23 regarding the lifetime permit issue. I found a clarification that you provided to make it clear 24

under what circumstances you might consider a lifetime permit, but in the pre-filed testimony, in the Statement of Reasons, it says, the Agency does want to retain authority to modify these permits in case USEPA or the Board establishes a new effluent guideline for this facility.

2.1

Would you leave open the possibility that if there was a problem with a lifetime permit that you would reopen that permit for review, or is it lifetime, it's lifetime, and, you know, you would not have the authority to reopen a permit if there was a problem?

MR. LECRONE: Let me go back to -- you're saying in our -- the pre-filed testimony? I want to make sure I'm getting the right context here.

DR. GLOSSER: There's a discussion on page 13 of the Statement of Reasons, 309.242(c).

MR. LECRONE: Yes. The Agency did want to maintain or retain the authority to open a permit for reasons such as what I mentioned in here in case there was a change in the standards or if some other issue arose that would allow the Agency to issue a supplemental permit or modified permit to address whatever issues that might be, such as rule changes

Page 11 1 or the results of enforcement or something else. 2 DR. GLOSSER: That's what I was thinking, 3 more from the enforcement standpoint? MR. LECRONE: Yeah. 4 DR. GLOSSER: The others are external to 5 6 the operator --7 MR. LECRONE: Right. DR. GLOSSER: -- in terms of the rules 8 9 change or effluent standards change, but the facility might have a problem that you would want to go in and 10 11 fix. 12 MR. LECRONE: Right. 13 DR. GLOSSER: I wanted to make sure you 14 had the authority to do that. MR. LECRONE: Yes. That was our intent 15 16 to maintain that authority. 17 DR. GLOSSER: Okay. Thank you. That's 18 the only question I have on that. 19 HEARING OFFICER JAMES: Does the Board have any other follow-up questions? 20 2.1 MS. LIU: I have a couple questions if 22 it's okay. Good morning, Darin. How are you? 23 MR. LECRONE: Good. MS. LIU: In response to question number 24

6, the Agency stated that they would expect the waiver request to include an approximate date that the application would be submitted and that the waiver would be granted with a new application due date.

MR. LECRONE: Right.

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MS. LIU: So when the waiver is actually issued, the idea is that it would contain a new date that the application would be due?

MR. LECRONE: Correct. It wouldn't be just an open-ended, whenever they get around to it kind of thing. They would tell us when they make the request for a waiver, you know, here's why we can't meet the deadline, here's when we expect the application to be filed, and that can be based on whatever the reason is: Are they waiting on lab results, do they have a scheduled discharge event that they've been waiting on to be able to take that sample that allows them to complete the application, that sort of thing. So that would be part of their justification for requesting the waiver that we would expect it to be completed by such and such a date. We would put that in there so that is the expectation when the waiver's granted.

MS. LIU: Does the ruling need to specify that the request for a waiver include some sort of a timeline when they would expect to be able to submit an application, or is that something that they would just understand by working with the Agency on the waiver process?

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MR. LECRONE: I mean, that was just kind of our expectation, I believe, that when they would make that request, that would be part of their justification and reasoning for a requested waiver that they spell out what it is they're lacking, what it is they're unable to complete in order to file that application, and that part of that reasoning would include a date of when that result is expected. That was our thought behind it anyway.

MS. LIU: Okay. On question 7, you refer to the Agency would be acceptable to a 21-day decision timeframe for all denials. If someone were to submit a request for waiver, they could expect it, were it to be denied, it would happen within 21 days.

MR. LECRONE: Uh-huh.

MS. LIU: How about approvals?

MR. LECRONE: Well, our thought was that the denial of such a waiver would be the key decision

for the permittees, that if we're going to accept it, we'll be discussing that with them. We'll let them know. And if the waiver's accepted, then they're not going to have an issue and if the waiver is accepted, their deadline is extended, an administrative continuance is granted.

2.1

Accordingly, the denial of the waiver request would be the key decision for them that we would need to get to them by a date certain, so that they could proceed with whatever else they needed to do.

So the waiver was -- the granting of the waiver wasn't thought to be as key as if the Agency made the decision to deny one.

We're going to do our best to answer the

-- grant the waivers within that same timeframe or
sooner as well, but it's just that we thought that
putting a certain timeframe on the denial would be
key for the permittee.

MS. LIU: Sure. I can imagine if they got to day 22 and they hadn't heard from you, that would be good news; right?

MR. LECRONE: Yeah, exactly. And so the -- yeah, if we're going to grant it, they're going to

be happy, and so, if not, they need to know as soon as we can let them know, and we would try to get all those answers within 21 days regardless, but, for sure a denial, so we can let the permittee know what our decision was.

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MS. LIU: I'm not a lawyer. Sometimes I know that the Agency has certain timeframes, and if the Agency doesn't act within those timeframes, things happen by operation of law. Is that anything that could happen here, where a waiver could be granted by operation of law because of no response from the Agency?

MR. LECRONE: I'm not a lawyer either. I don't know the answer to that. We would have to think about it a little bit. We didn't really think of it from that perspective --

MS. LIU: Okay.

MR. LECRONE: -- so I don't have an answer to that.

MS. LIU: If you could look into it.

MR. LECRONE: Yeah, we would be happy to look into it and let you know how we see it by the next hearing date, or whenever the Board would like us to.

MS. LIU: On question 13, the Board had asked a question regarding the language that was proposed. The language was at the end of proposed Section 309.202(c)(6).

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As proposed, the language read, groundwater remediation systems pretreatment, and then you provided a beautiful long answer, but in your answer, you referred to it as groundwater remediation pretreatment systems. I think that's what we were trying to get at. Did you mean to say pretreatment before systems, or systems pretreatment.

MR. LECRONE: Well, let me look. I may have read more into the question than --

MS. LIU: I think maybe you did.

MR. LECRONE: Okay. I think -- yeah, the way we had originally proposed it, referring to groundwater remediation system pretreatment, if we would just flip those two words, it would have the desired intent, which was to exempt the pretreatment systems themselves and not the source from the system, so the -- in the Board's questions where it asks about remediation systems, with or without pretreatment, then in my written response, I've tried to clarify that it was just the pretreatment system

itself that we were trying to exempt, but I may have actually just read too much into it, and you're right, flipping those two words may have the same effect.

MS. LIU: All right. Thank you.

MR. LECRONE: Yeah.

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MS. LIU: Those are all the questions I had for the pre-filed -- or for the answers filed today.

HEARING OFFICER JAMES: Okay. And then if the Board has no further questions, we'll move on to IERG's questions.

MR. KEENAN: I do have a question. I'm sorry. It's neither about your testimony or about the answers to the question.

In the past few days, USEPA has promulgated new water quality standards, and I just wondered if -- obviously, you wouldn't have had a chance to look at them yet, but at the next hearing you might address whether or not any of these changes that the USEPA is promulgating to water quality standards is going to have a knock-on effect here, and what, if anything, we need to take a look at from that perspective.

MR. LECRONE: Okay. We can do that.

2 MR. KEENAN: As long as you're

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reorganizing your rules, we may as well try to adjust if there's anything there, rather than having to come back and do it all over again.

MR. LECRONE: Understandable. We'll take a look at it.

MR. KEENAN: Thank you.

HEARING OFFICER JAMES: Okay. Then I guess we'll now move on to IERG's questions.

MS. ALLGIRE: Thank you. I'm Abby
Allgire with the Illinois Environmental Regulatory
Group.

We have a question based on your Responses to the Board's questions.

Looking at the language that's proposed under your answers to 1, 2 and 3, and then your response to number 5, is it your intent, then, with the language proposed at A(1)(a) and (b) to make it that you have to file for the waiver within -- before you hit your 180 days, or could you file that after the 179th day or the 100th day before expiration?

MR. LECRONE: Yeah, you could file -- the intent was that you could file the waiver 200 days

prior to expiration, 160 days prior to expiration.

As long as the waiver request came in before the

permit expires, then we would accept it. We just

wouldn't -- like, the last sentence would be, you

can't file a waiver request after a permit's expired;

but anytime before the 180 days or within the 180

days would be acceptable.

2.1

MS. ALLGIRE: Okay. And then, also, looking at number 7, I know that you were kind of asked this question, and if you need time to answer it, that's fine, but if you don't receive your denial by the 21 days, on day 22, can I know that I've now automatically been accepted, if I don't receive anything?

MR. LECRONE: Well, we really haven't had a chance to think about that, but that wasn't necessarily our intent. It was just to essentially guarantee that if there was going to be a denial, it would have to be within 21 days.

I think we would have to -- we'd have to think about that and maybe provide a better response on that thought by the next hearing, because it's not really something we'd considered prior to today.

MS. ALLGIRE: Okay. I think that's all

that we had. Thank you.

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HEARING OFFICER JAMES: Are there any other follow-up questions by anybody, based upon anything we've heard today?

DR. GLOSSER: I have one additional question. I have one question about Mr. LeCrone's Pre-Filed Testimony, and it's on page 5. They're not numbered, but it's on page 5 at the top of the page, related to Section 309.201(b)(1).

It says: This new subsection would only be applicable, if and when the Agency would receive pretreatment program approval from USEPA. The Agency to date has not sought or obtained pretreatment program approval from USEPA.

And I know there are pretreatment regulations on the books already, but could you elaborate a little bit about how that works now?

Does USEPA issue these pretreatment permits? And if they don't, how does that -- how do we have regulations in the books that aren't being implemented, and what are the Agency's plans for applying for that approval?

MR. LECRONE: Okay. What page did you say it was on?

DR. GLOSSER: Well, it's on -- mine aren't numbered, but page 5 at the very top, the first full paragraph related to Section 309.201(b)(1).

MR. LECRONE: Okay.

2.1

I don't have the full set of regulations with me, but my recollection is that we needed to make that change to basically tie everything together. That extra set of pretreatment standards does exist if we would be delegated pretreatment program authority by USEPA, which we have not sought and don't currently have.

Beyond that, I haven't looked at it.

DR. GLOSSER: But does USEPA now issue these permits themselves?

MR. LECRONE: I don't know if they actually issue a permit themselves or not. We've got our own permits for pretreatment that we issue currently. The specific requirements of the USEPA pretreatment program, above and beyond that, I don't know.

For POTWs that have an approved pretreatment program, they issue an operating permit or discharge authorization of some sort, however it's

1 set up in their ordinance. Most of them, I think, 2 call them a discharge authorization; some call it an 3 operating permit. That would be the equivalent to USEPA issuing a permit, but I don't think that USEPA 4 5 actually issues a pretreatment permit themselves. I'm not a hundred percent certain on that. Because 6 7 the -- the POTWs that would be under that program are 8 going to have to set up their own equivalent 9 permitting process to obtain that pretreatment program approval, so I'm not sure there would be --10 11 I'm not sure there would be a situation where USEPA 12 would be needing or appear to need to issue a 13 pretreatment permit, because their program would only 14 govern, my understanding, those that are part of 15 their pretreatment programs. 16 I'm not really certain. I don't think 17 they issue anything of their own, but most of those 18 would fall under a POTW's approved program is my 19 understanding. 20 So I don't know if that answers you or 2.1 not, but... 22 DR. GLOSSER: Okay. Thank you. 23 MS. LIU: So would a discharge

authorization issued by a POTW be different than a

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pretreatment permit by the USEPA's rules?

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MR. LECRONE: It could be. It would depend on -- a POTW could have their own local ordinance that requires a discharge authorization whether they have USEPA pretreatment program approval or not, so if I -- the way I understand it, if they do have pretreatment program approval, that discharge authorization or whatever they call it under the local ordinance, would serve that purpose, but they could still -- if they don't have pretreatment authority, they could still require their own local permit; it just wouldn't be part of that program oversight by USEPA.

MS. LIU: Does the Agency issue any of its own pretreatment works permits?

MR. LECRONE: We do, yeah. We issue -for those that are discharged to a POTW with an
approved pretreatment program, we only issue a
construction permit, and that's -- I don't have it
right in front of me, but that's already accounted
for in the regulations now in 309 subpart (b).

If the POTW does not have an approved pretreatment program, we issue them a construction and an operating permit --

MS. LIU: Okay.

2.1

MR. LECRONE: -- under state regs that's separate from any USEPA-related pretreatment program permitting.

So, like I said, if it's through a POTW that has that approved pretreatment program, we only issue a construction permit. The operating permit comes from the POTW under that pretreatment program, and if they do not, then we issue both.

MS. LIU: Okay. Thank you for that clarification.

MR. LECRONE: You're welcome.

MR. KEENAN: I was going to ask just a follow-up question.

MR. LECRONE: Okay.

MR. KEENAN: Is the reason that the Agency hasn't sought the USEPA delegation because Illinois' own program was either the same as or sufficient in the Agency?

MR. LECRONE: I don't honestly know why we haven't, but there hasn't been any effort -- I've been here, I think, a little over 23 years and there's never been any effort to obtain program approval that I am aware of since I've been here. I

Page 25 1 do not know the reason behind that, though. 2 MR. KEENAN: Okay. MR. LECRONE: But for whatever reason, we 3 haven't. 4 5 MR. KEENAN: Okay. 6 HEARING OFFICER JAMES: Are there any 7 other questions for the witness? Okay. Then I quess 8 we're done asking questions to the witness. 9 Is there anyone else here today that wishes to testify or offer comment? Okay. Seeing 10 11 none, we'll move on to closing matters. Is there any 12 objection? Okay. 13 Moving to the Economic Impact Study. 14 Since 1998, Section 27(b) of the Environmental 15 Protection Act has required the Board to request that the Department, now known as the Department of 16 17 Commerce and Economic Opportunity, conduct an 18 Economic Impact Study of proposed rules before the 19 Board adopts them. The Board then must make either 20 the Economic Impact Study or the Department's 2.1 explanation for not conducting one, available to the 22 public at least 20 days before public hearing.

Board's Chairman, Dr. Deanna Glosser, requested that

In a letter dated June 30, 2015, the

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the Department conduct an Economic Impact Study of this proposal. The Board did specifically request a response no later than August 3rd, 2015. The Board did not receive any response from DCEO to this request.

Would anyone like to testify regarding the request from the Board to DCEO? Nobody? I see nobody that wishes to. So we can go ahead and adjourn after a couple of additional -- I'm sorry. Go ahead.

(There was then had an off-the-record discussion.)

We'll enter the Answers to the Pre-filed Questions as exhibits on the record. The Answers to the Board's questions will be Exhibit Number 1, and then the Answers to IERG's Questions will be Exhibit Number 2. Are there any objections?

MS. TERRANOVA: I just have a question. Will Mr. LeCrone's Pre-Filed Testimony be Exhibit

Number 3?

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HEARING OFFICER JAMES: Okay. Well, yeah. We'll take that back.

Mr. LeCrone's Pre-Filed Testimony will be marked as Exhibit 1; the Responses to the Board's

1 | Pre-Filed Questions will be marked Exhibit 2; and the

2 Responses to IERG's Pre-Filed Questions will be

3 | Exhibit 3, if there are no objections.

MS. TERRANOVA: Okay.

HEARING OFFICER JAMES: Seeing none,

we'll go ahead and do that.

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Okay. Then I have a couple quick announcements before we adjourn.

The second hearing in the docket has been scheduled to take place on September 24, 2015, in Chicago, with a deadline of September 10, 2015, to pre-file any testimony, and a deadline of September 17, 2015, to pre-file questions based on that testimony.

The Board expects to receive the transcript of this hearing on or before September 1st, one week from today. Very soon after the Board receives the transcript, it will be available on the Board's website at www.ipcb.state.il.us under this docket number, R15-24.

Anyone may file written public comments in this rulemaking with the Clerk of the Board.

Comments may be filed electronically through the Board's Clerk's Office Online, or COOL. Any

questions about the electronic filing, or COOL, should be directed to the Clerk's office. Filings with the Board, whether paper or electronic, must also be served on the Hearing Officer and those persons on the service list. Before filing, please check with the Board's Clerk to make sure that you have the most recent version of the service list.

If anyone has any questions about the procedural aspects of this rulemaking, my contact information is posted on the Board's web page.

Are there any other matters that need to be addressed at this time?

Okay. Seeing none, I'd like to thank everybody for participating today, and the hearings's adjourned.

(Hearing adjourned at 11:45 a.m.)

1	STATE OF ILLINOIS)) SS
2	COUNTY OF MACON)
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4	I, Lisa K. Hahn, Certified Shorthand
5	Reporter and Notary Public in the State of Illinois,
6	County of Macon, do hereby certify that I reported in
7	shorthand the proceedings had at the hearing
8	aforesaid, and that the foregoing is a true,
9	complete and correct transcript of the proceedings
10	of said hearing as appears from my stenographic
11	notes so taken and transcribed under my personal
12	direction.
13	Witness my official signature in and for
14	the County of Macon, State of Illinois, on this 28th
15	day of August, 2015.
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19	Notary Public CSR, RMR
20	CSR #084.2149
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