

THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
 EVERGREEN FS, INC.,)
)
 Petitioner,) PCB 11-51
) PCB 12-61
 vs) (UST Appeal)
)
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
 Respondent.)

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TRANSCRIPT FROM THE PROCEEDINGS

taken before HEARING OFFICER CAROL WEBB, by
 LORI ANN ASAUSKAS, CSR, RPR, a notary public
 within and for the County of Cook and State
 of Illinois, at the Illinois Pollution Control
 Board, 1021 North Grand Avenue East (North
 Entrance), Springfield, Illinois, on the 15th
 day of February, 2012, A.D., at 10:00 o'clock
 a.m.

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(Document marked as
Respondent's Exhibit No. 1
for identification, 2/15/12.)

HEARING OFFICER WEBB: Good morning.

My name Carol Webb and this is the hearing for
Consolidated Dockets PCB 11-51 and 12-61, Evergreen
FS, Inc. versus IEPA. It is February 15th and we
are beginning at 10:00 a.m.

For the record, although
Petitioner is located in Livingston County, there
was no known public interest in this case. Thus,
I granted the party's request to hold the hearing
in Springfield.

I'll note for the record that
there are no members for the public present
although members or the public may submit public
comment if they so choose.

Petitioner in this case appeals
on numerous grounds including the absence of any
determination that the referenced prior release
was deemed ineligible on the Agency's failure
to either limit its review to the application or
provide a pre-denial opportunity to respond.

1 The decision deadline in this
2 case or these consolidated cases is June 21, 2012.
3 This hearing was noticed pursuant to the act and
4 the Board's rules and will be conducted pursuant
5 to Sections 101.600 through 101.632 of the Board's
6 procedural rules.

7 At this time I'd like to ask
8 the parties to please make their appearances
9 on the record.

10 MS. JARVIS: Melanie Jarvis, Special
11 Assistant, Attorney General for the Illinois EPA.

12 MR. SHAW: Patrick Shaw, counsel for
13 Evergreen FS, Incorporated.

14 HEARING OFFICER WEBB: Okay. Are
15 there any preliminary matters to discuss today?

16 MS. JARVIS: We have some matters
17 about documents that inadvertently got in record
18 that relate to a different site.

19 HEARING OFFICER WEBB: Okay. So
20 these documents should be removed from the record?

21 MS. JARVIS: These documents should
22 be removed from the record.

23 The first document starts on
24 Page 723 and ends on Page 731 and it relates to

1 a site called Arrowsmith Evergreen FS.

2 HEARING OFFICER WEBB: Okay.

3 MS. JARVIS: The next document begins
4 on Page 861 and ends on Page 865 and it relates to
5 Arrowsmith Evergreen FS.

6 HEARING OFFICER WEBB: Now, do these
7 documents say Arrowsmith on them?

8 MS. JARVIS: Yes.

9 HEARING OFFICER WEBB: Okay.

10 MS. JARVIS: In the heading.

11 HEARING OFFICER WEBB: Okay.

12 MS. JARVIS: As opposed to Dwight
13 Evergreen FS, which is the site at issue today.

14 HEARING OFFICER WEBB: Okay.

15 MS. JARVIS: Okay. The next are
16 technical review notes and it starts on Page 1062
17 and ends Page 1063.

18 Then we have a letter from the
19 Agency. It starts Page 1064 and ends Page 1068.

20 Then we have another letter
21 that starts Page 1069 and ends Page 1079.

22 I believe that's all the
23 documents.

24 HEARING OFFICER WEBB: Okay. Are

1 there any other preliminary matters to discuss
2 on the record today?

3 All right. Hearing none,
4 Mr. Shaw, would you like to give an opening
5 statement?

6 MR. SHAW: I will just give a quick
7 opening statement understanding there will be a
8 briefing schedule for --

9 HEARING OFFICER WEBB: Yes.

10 MR. SHAW: -- for this?

11 HEARING OFFICER WEBB: Correct.

12 MR. SHAW: I understand the hearing
13 officer's role here is to sort of make some
14 decisions about the relevance and be able to rule
15 on objections.

16 I'll give a little bit of an
17 outline of the issues that we're presenting here
18 today so that you can make the rulings. Hopefully,
19 there won't be any objections, but counsel is
20 right, of course. This case involves an old
21 facility, maybe 50 years -- or 50 years ago.
22 It's been an Amoco station.

23 In 1991, there was an incident
24 reported and the incident reported something like

1 a loss of 5,700 gallons of fuel from an underground
2 storage tank as reported to the Illinois Emergency
3 Management Agency.

4 Subsequently, as we go through
5 this, the issue has become what was the nature
6 of the 1991 incident versus a 2007 incident.
7 The nature of the 1991 incident is one in
8 which the Agency has indicated that it was not
9 eligible, it was not a UST release and, therefore,
10 there's an apportionment between the 2007 and
11 1991 incidents.

12 The 1991 record, which is
13 filed here with the Board, and they have pretty
14 much all the evidence it's going to have from
15 1991, '92 and '93, and it's kind of a confusing
16 story. As I said, there was a call to the
17 Emergency Management Agency reporting a release
18 and loss of product of 5,700 gallons and then
19 30 days later, they reported to the Agency what
20 they had figured out and discovered and what
21 they had in response to this. In particular,
22 the response was to fuel discovered in a creek
23 that two and a half miles away.

24 At that time they told the

1 Agency something slightly different. They
2 indicated that there was 500 gallons of fuel
3 lost according to their product reports and
4 they collected 100 so far, and that it was
5 traveling along the tile to this creek. They
6 had been sort of gathering it there.

7 They also gave the Agency at
8 that time a copy of the bill -- the repair bill
9 saying there was damage to the line between
10 the diesel tank and the diesel dispensing pump
11 and specifically this submergible tank pump in
12 there that was damaged and repaired. That was
13 believed to be the cause of the release. It was
14 a slightly different story than the first one.

15 The third story was about 18
16 months later, which is the one that the Agency
17 has indicated is the basis of dispute here, was
18 that the owner/operator indicated that the
19 release must have been caused by an overflow
20 of an observation or monitoring well on the
21 site.

22 And based upon that, the
23 decision was made in '92 or so that there was
24 no eligibility because that was not -- according

1 to the Agency at that time -- not a discharge
2 into or from the underground storage tank
3 system.

4 Now, we dispute a lot of
5 legal and factual issues here. The only thing
6 that we are bringing today is the testimony
7 of a professional engineer to comment upon the
8 record in a way that I can't. I sort of just
9 commented on it, but we're not introducing any
10 new evidence into the record. It is what I
11 think the Board sometimes discussed as explaining
12 the record or providing some sort of expert
13 opinion as to the record.

14 The person we have here is
15 Mike Keebler from Environmental Management and
16 that will be the sum of our testimony here
17 today to sort of discuss the factual scenarios
18 and none of the legal issues. We will save
19 those for the briefs. Thank you.

20 HEARING OFFICER WEBB: Ms. Jarvis,
21 would you like to make any opening statements?

22 MS. JARVIS: I'll save mine for the
23 brief.

24 HEARING OFFICER WEBB: Okay.

1 Mr. Shaw, would you like to present your case?

2 MR. SHAW: Yes. We would like to
3 call Mike Keebler.

4 HEARING OFFICER WEBB: Okay. In
5 fact, you could stay right there if you want to
6 question him over there. I just want him to look
7 towards the court reporter.

8 MR. SHAW: Okay. If you don't mind
9 me looking over your shoulder, Melanie?

10 MS. JARVIS: No, I don't mind. I'll
11 move my records to give you some room.

12 HEARING OFFICER WEBB: And would you
13 please swear him in?

14 (Witness sworn.)

15 WHEREUPON:

16 M I C H A E L R. K E E B L E R, P. E.
17 called as a witness herein, having been first duly
18 sworn, deposeth and saith as follows:

19 DIRECT EXAMINATION

20 BY MR. SHAW

21 Q. Could the witness please state your
22 name for the record?

23 A. Michael Keebler.

24 Q. Mr. Keebler, what is your profession?

1 A. I'm a professional engineer. We do
2 environmental and civil engineering consulting.
3 More or less, our focus is mostly on underground
4 storage tank releases through the state of Illinois.

5 Q. Now, what is your relationship to
6 Environmental Management?

7 A. I am the president.

8 Q. How long have you been the president
9 of Environmental Management?

10 A. Almost six years.

11 Q. How many?

12 A. Six years.

13 Q. Okay. Are you familiar with the
14 Evergreen FS underground storage tank release
15 in Dwight, Illinois in an old fuel 24 site?

16 A. Yes.

17 Q. How did you first become familiar
18 with that site?

19 A. We took this site over. We had a
20 contractor that had contacted us on behalf of
21 the owner. They wanted to get the tanks out of
22 there. The owner hired us, which was Evergreen FS,
23 to oversee the tank removal. We discovered that
24 there was contamination prior to removing the tanks.

1 We had to go out there and take a soil sample,
2 waited for the envelope to come back and they were
3 above the IEPA Tier 1 objectives.

4 Q. And about what year was this?

5 A. That would have been 2007.

6 Q. Okay. And subsequently, has
7 Environmental Management, Inc. been doing the
8 consulting work on this project?

9 A. Yes.

10 Q. And that would be all the consulting
11 work on the project?

12 A. Yes, all of it.

13 Q. As part of your job at Environmental
14 Management, have you been reviewing the documents
15 and the filings in this release?

16 A. Yes.

17 Q. Okay. Have you prepared all of the
18 documents?

19 A. No.

20 Q. Who are some of the people who have
21 prepared the documents?

22 A. Eric Andrews, which he no longer
23 works for us, and then the project manager in
24 charge of it now is Alan Curtis.

1 Q. Before you came here today, had
2 you reviewed the records on file with the Agency
3 regarding this release?

4 A. Yes.

5 Q. Without repeating some of the things
6 that I tried to gather out of the record in my
7 opening statements, I may have a few questions
8 for you about some the components of the record
9 or some of the items and what they are and what
10 they do.

11 One, of course, would be the
12 observation well. What is an observation well
13 or what is -- and what is the purpose of an
14 observation well at an underground storage tank
15 site?

16 A. An observation well -- typically,
17 the way they install them is they usually put
18 four observation wells around the perimeter of
19 the underground storage tanks to detect if the
20 groundwater shows a sheen of the product that
21 was being stored in the tank.

22 They typically put it in the
23 backfill of the tank excavation. That's the
24 most likelihood to determine where the release

1 would be. More or less, it's about a -- usually,
2 it's like a nine-inch well. It's very distinctive
3 compared to, you know, the tank system itself
4 where the fill of the -- the fill in the tank
5 is.

6 Q. Well, let me back you up there.
7 You said nine inches. Do you mean nine inches
8 in diameter or deep?

9 A. Oh, nine inches in diameter.

10 Q. Nine inches in diameter. How deep
11 do they usually go?

12 A. Well, they'll put them into the
13 groundwater table. Probably no deeper than 20
14 feet.

15 Q. Okay. I think I interrupted you,
16 but were also going to discuss the fill pipe?
17 What is a fill pipe?

18 A. Typically, the fill pipe is where
19 the off-loading truck would fuel the tanks from
20 their tanker truck. They would connect a hose
21 to it. It's usually a quick connect for the
22 tanker truck hose to connect to it so it's securely
23 tight.

24 Q. Does an observation well have a

1 quick connect?

2 A. No, it does not. And the fill
3 pipes are typically a three or four-inch
4 connection where the observation well is much
5 larger.

6 Q. I had another question regarding
7 the record. In the record, there is an indication
8 that the tank -- the tank or the diesel tank in
9 the diesel tank system or pipes were tested by
10 two different organizations. In your experience,
11 is that normal?

12 A. It can be. Typically, whoever
13 tested the tanks, they have to be certified by
14 the manufacturer as well as meeting all of the
15 state requirements for having a license. So
16 piping, typically someone else could test that,
17 but they still would have to be licensed by
18 the -- by the state.

19 Q. There are different licensing
20 requirements for these two elements?

21 A. Same licensing, but one would have
22 to be licensed by the manufacturer. So if the --
23 let's say if the maintenance guy that normally
24 repairs the pumps and dispensers and all that

1 stuff, they may not have the license that the
2 guy who installed the tank might have because
3 they can't certify the tank if they don't have
4 a license to do that.

5 Q. In terms of testing the tank's
6 tightness, what is the -- what would be the
7 normal method of doing that in the early
8 '90s?

9 A. Usually, you do it based, like,
10 on a volumetric. Based on the volume of the
11 tank, they pretty well put something in there
12 to test level of the tank over time and if the
13 tank -- the test has to be able to detect a
14 lowering of the tank, at least .1 gallons per
15 hour.

16 So whatever method they used,
17 they have to at least be able to meet that
18 criteria and if the tank loses product over
19 that period of time, that means it probably
20 has a leak.

21 Q. How much is normally considered
22 tight or not tight in that kind of test?

23 A. Well, anything that if it's leaking
24 over .1 gallons per hour, it's got some kind of

1 leak somewhere and they've got to repair it.

2 Q. Now, in this situation, there was
3 a repair done and the invoice describes it as a
4 repair of an STP, I believe. What do you know
5 what an STP is?

6 A. Yes. It's the submersible pump
7 that is put in to more or less suck the product
8 out of the tank and send it to the dispensers.

9 Q. Okay. Would that have been in
10 close proximity to the tank?

11 A. It's right above the tank. I mean,
12 it's in ground, but above the tank. It's got more
13 or less a probe that sticks into the tank. It
14 probably stays three inches or so off the bottom
15 of the tank and then the pump is on top that
16 sucks the fuel from the tank and sends it to the
17 dispensers.

18 Q. Is there anything particularly
19 significant about it being submersible?

20 A. More or less, that's pretty much
21 just one type. It shouldn't -- it should only
22 suck from the tank. It shouldn't suck from
23 anything else. It's more or less underground.

24 Q. Having looked at the documents

1 from 1991, 1992 and 1993 regarding this site, do
2 you have any opinion with a reasonable degree of
3 certainty whether the Agency record is consistent
4 with an overflow of the observation well?

5 A. No. There is no consistency, but
6 they did, like I said, check the piping. They
7 did determine that there was a leak in the piping
8 pretty well a day or two after the release was
9 reported. They fixed the piping and then that's
10 when they tested the tank as well to make sure
11 everything was back in so they could get the
12 facility back in operation.

13 The other thing is that my
14 opinion would be that most of these tank drivers
15 that do this every day, no matter what, they
16 would be able to connect the tank line that they
17 used to pull or put into the underground storage
18 tank fill pipe. They have a quick connect there.
19 It's a three or four-inch hose. If they would
20 have pulled the observation well, they would have
21 to take the cap off or they would have to more or
22 less pull the lid off and stick the hose in there,
23 which they know there would be no way to connect
24 it.

1 There's not too many tank
2 drivers that wouldn't know what to do and wouldn't
3 know what they're doing when they're putting fuel
4 in a tank. That's why I don't think it was a
5 direct spill into the observation well. It could
6 have been other things. It could have been where
7 it overspilled when they were fueling the tank.
8 It could have been the piping itself, but definitely
9 my opinion would be they couldn't stuck that in
10 that well.

11 Q. Since your firm has been involved
12 in this, you guys have done some more analytical
13 analysis of the property than probably was done
14 in the early '90s, I assume?

15 MS. JARVIS: I'm going to
16 object to that because that's speculative
17 as to whether or not they have done more
18 than the people who were on the site there
19 first.

20 MR. SHAW: Okay. I will reask
21 the question.

22 BY MR. SHAW:

23 Q. The work that Environmental Management
24 has done with the site since 2007, has it indicated

1 any further information about the nature of
2 contamination on the property?

3 A. When the release was reported, it
4 was in '91. They found the contamination into
5 a nearby creek that's on the east side of our
6 property about two and a half miles away.

7 The contamination that's found
8 presently is actually west and south of the tank
9 pit. So the investigation work that was done
10 back in '91 that was limited determined that
11 there was very low levels of soil and groundwater
12 contamination on the site at the present time.
13 Now, the levels are extremely high and the plume
14 is extremely large compared to '91.

15 Q. How many releases were -- how many
16 tanks reported releases in 2007?

17 A. I think three or four. I think three
18 maybe.

19 Q. Well, it's in the record so I don't
20 want to quiz you on that.

21 What is the groundwater flow at
22 the property?

23 A. The groundwater flows to the south.

24 Q. Okay. Now, assuming that there was

1 a release -- I'm just saying assuming. It's
2 a hypothetical. I think I can ask an expert,
3 but I want to make sure it's clarified as a
4 hypothetical.

5 Assuming that there was a
6 release into the observation well in '91, how
7 significant could that release have been and
8 do you have any opinion as to how much of
9 that contamination could still persist through
10 2007?

11 A. The way the first reporting was
12 cited is that there was a field tile that ran
13 from the tank pit all the way across to the
14 creek and based on the observation at that time,
15 they are saying that the release happened, if
16 it did happen at the observation well, it would
17 have gone out immediately into the creek and
18 whatever was remaining would have been in the
19 backfill of the tank.

20 They did put some absorbent
21 material in the one observation well. It actually
22 was on the southwest side of the tank, not on the
23 east side. All the other observation wells came
24 back clean except the southwest side, which also,

1 you know, if the tiles are on the east side and
2 there's a release, it would be all throughout
3 the whole backfill and they should have detected
4 it on the east side as well as on the south side.

5 So that's why if there was a
6 release into the observation well, it would be
7 in all the -- it should pretty well be in all
8 the observation wells especially if it was
9 5,700 gallons. That's a substantial amount at
10 one release.

11 Q. If 5,700 gallons was released on
12 the day that the Illinois Emergency Management
13 Agency was called, would that be something you
14 would expect to be visible at the property?

15 A. Yes, very visible.

16 Q. Do you have an opinion as to whether
17 or not the 500-gallon statement or 5,700-gallon
18 statement, which one is more likely to be correct
19 here?

20 A. Well, based on the corrective
21 action -- the remedial action that they did
22 immediately, pretty well any product -- it
23 floats on water.

24 So if it went into the creek

1 and it happened that quickly, they should have
2 been able to absorb a tremendous amount more
3 than 100 gallons, which is all at the time that
4 they said they ended up being able to collect
5 at the time.

6 If that was the case, if it
7 would have spilled out onto the surface water,
8 they would have been able to absorb almost all
9 of that and then they made a determination that
10 the tile was clean after they did the immediate
11 cleanup, which was in a couple of days there,
12 which also there should have been a lot of
13 residual type of petroleum still this that
14 pipe in a couple of days unless there was
15 a huge re-event or something, which I don't
16 know if that was the case or not.

17 Again, there would have been
18 a lot more product they would have discovered
19 in the creek or in the observation wells.

20 Q. Do you have an opinion to a
21 reasonable degree of certainty as to what the
22 most likely cause of the 1991 release was?

23 A. Well, I think that station has been
24 there for 50 years, 40 or 50 years. Typically,

1 what we see on sites is that it's a historic
2 release. There could have been numerous releases
3 prior to '91. There is -- there is no way for
4 us to determine that either.

5 Same with us trying to determine
6 between '91 and 2007 except if the levels are much
7 higher. Then you know there's been some releases
8 if you have some data showing that the site was at
9 this level at a certain year and then at this level
10 years down the road. That's really the only way
11 that you can determine, you know, where this stuff
12 came from.

13 MR. SHAW: I don't have any
14 further questions.

15 HEARING OFFICER WEBB: Ms. Jarvis?

16 MS. JARVIS: If I could have just
17 a second --

18 HEARING OFFICER WEBB: Sure.

19 MS. JARVIS: -- so I can pull out
20 the documents that I want to look at.

21 CROSS-EXAMINATION

22 BY MS. JARVIS

23 Q. Mr. Keebler, you were -- it's been
24 16 years before you came on-site since the '91

1 release, correct?

2 A. I was never on the site.

3 Q. You have never been on-site?

4 A. Well, no. I mean --

5 Q. I mean, it was 16 years from the
6 '91 release and until you eventually went on-site --
7 it was 16 years between the '91 release and 2007?

8 A. Right.

9 Q. So you weren't present to know what
10 happened at the site during that spill?

11 A. Correct.

12 Q. So your opinion is based solely on
13 your review of the record?

14 A. And professional.

15 Q. Okay. So I'm going to direct you
16 to a couple of documents. The first one is the
17 IEMA report and that's at Page 6 of the record.

18 I'm going specifically to the
19 narrative. If you could, read that narrative
20 starting with the pink all the way to the period
21 there.

22 A. Do you want me to read it here
23 (indicating)?

24 Q. Right here where it starts, "They

1 are missing."

2 A. Oh, okay. It just says, "They are
3 missing 5,300 gallons when buyer called me from
4 Dwight Fire Department, he said his fire chief
5 on scene, said company denied responsibility and
6 didn't tell about the large loss and they had told
7 FDA about."

8 Q. So at that time the company appeared
9 to be covering up the release?

10 MR. SHAW: Objection, speculation.

11 HEARING OFFICER WEBB: Sustained.

12 BY MS. JARVIS:

13 Q. Now, I'm going to show you what's
14 on Page 68 of the record. It is something from
15 Livingston Service Company and something by, I
16 guess, your predecessor on the site, Midwest
17 Engineering Services.

18 I'm going to direct you to
19 Page 75 and it's continued on to Page 76. So
20 if you could read that that's in pink.

21 A. "It is understood the release in
22 diesel fuel may have occurred on-site during
23 UST filling activities. Both Mr. Newman and
24 Mr. Soloran indicated that one observation

1 well located on the northwest corner of existing
2 UST cavity may have been mistaken as the diesel
3 fuel UST fill by the tanker truck driver and
4 that an undetermined quantity of diesel fuel
5 was subsequently off-loaded into the observation
6 well."

7 Q. And you reviewed this document when
8 you reviewed the rest of the record?

9 A. I did.

10 Q. And if I could have what's marked
11 as People's Exhibit 1, are you familiar with this
12 document?

13 (Document tendered
14 to the witness.)

15 BY THE WITNESS:

16 A. Yes, I am.

17 BY MS. JARVIS:

18 Q. And, in fact, you were the signatore
19 on this document, correct?

20 A. Correct.

21 Q. So you have asked the State Fire
22 Marshal for a decision on whether or not this
23 tank is eligible?

24 A. Correct.

1 Q. And according to that document, they
2 said that it was not?

3 A. They didn't have all the information.

4 Q. Well, yes or no, did they say that it
5 was able or not?

6 A. At the time.

7 Q. You have refiled?

8 A. Correct.

9 MS. JARVIS: Okay. That is all
10 that I have.

11 HEARING OFFICER WEBB: Are you
12 moving to --

13 MS. JARVIS: Yes. I'm sorry.
14 I am moving to enter that into evidence.

15 HEARING OFFICER WEBB: Is
16 there anything?

17 MR. SHAW: As I would like
18 to point out, as maybe discussed
19 before, that this is a document existing
20 after the Agency's decision so I don't
21 think it can be used for purposes of
22 determining of whether or not the
23 Agency's decision was correct or not,
24 but I do not have an objection to it

1 being admitted into the record for a
2 somewhat more limited purpose such as
3 allowing the Board to know the totality
4 of circumstances that are going on
5 with this site so that it can make
6 a decision that is useful for it.

7 To be honest, I had not
8 seen this document before and I still
9 haven't seen this document.

10 HEARING OFFICER WEBB: Would
11 you like to see it right now?

12 MR. SHAW: I can kind of
13 probably guess that they are all
14 form letters, but I have not done an
15 analysis of that letter, but I think
16 I understand that there is probably --
17 it's useful for the Board to have this.

18 I just want to say we
19 do not agree that it should be used to
20 decide whether or not a decision was
21 correct.

22 HEARING OFFICER WEBB: Okay.
23 Well, I'm going to admit what's been
24 marked as Respondent's Exhibit No. 1

1 because it may be important information
2 for the Board to have to make an
3 informed decision.

4 (Respondent's Exhibit
5 No. 1 admitted into
6 evidence.)

7 HEARING OFFICER WEBB: Do you
8 have any redirect?

9 MR. SHAW: I just have one
10 question.

11 REDIRECT EXAMINATION

12 BY MR. SHAW

13 Q. Between 1991 and 2007, was this
14 facility operated continuously as a service
15 station?

16 A. Yes.

17 Q. So when you guys came on was when
18 the facility life was expiring; is that correct?

19 A. Correct.

20 MR. SHAW: No further
21 questions.

22 MS. JARVIS: I have nothing
23 further.

24 HEARING OFFICER WEBB: Okay.

1 Do you have anything further to present
2 for your case?

3 MS. JARVIS: No, I don't.

4 HEARING OFFICER WEBB: Okay.

5 Let's go off the record for a moment to
6 discuss the briefing schedule.

7 (Whereupon, a discussion
8 was had off the record.)

9 HEARING OFFICER WEBB: We'll go
10 back on the record.

11 We have just a conversation off
12 of the record about a briefing schedule. The
13 transcript is due by February 28th and will be
14 posted on the Board's website.

15 The public comment deadline is
16 February 29th. Any public comment must be filed
17 in accordance with Section 101.628 of the Board's
18 procedural rules.

19 Petitioner's brief is due by
20 March 20th and the Respondent's brief is due by
21 April 20th. Petitioner's reply brief is due by
22 May 1st.

23 The mailbox rule will not apply
24 and if the parties file electronically, briefs must

1 be filed by 4:30 p.m. on the due date.

2 Mr. Shaw, would you like make any
3 closing argument?

4 MR. SHAW: No, thank you.

5 HEARING OFFICER WEBB: Ms. Jarvis?

6 MS. JARVIS: No.

7 HEARING OFFICER WEBB: Okay. Again,
8 I will note that there are no members of the public
9 here to make any comments so I will conclude the
10 proceedings. We stand adjourned and I thank you
11 all for your participation.

12 MR. SHAW: Thank you.

13 (Whereupon, no further
14 proceedings were had in
15 the above-entitled cause.)

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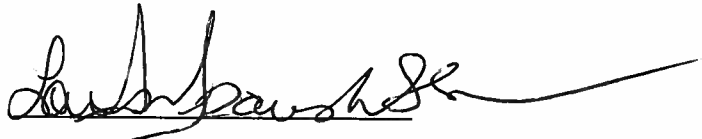
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24

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)
4
5


6 I, LORI ANN ASAUSKAS, CSR, RPR,
7 do hereby state that I am a court reporter doing
8 business in the City of Chicago, County of Cook,
9 and State of Illinois; that I reported by means
10 of machine shorthand the proceedings held in the
11 foregoing cause, and that the foregoing is a true
12 and correct transcript of my shorthand notes so
13 taken as aforesaid.

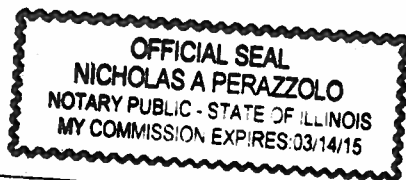
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15 
16

17 Lori Ann Asauskas, CSR, RPR.

18 Notary Public, Cook County, Illinois
19

20 SUBSCRIBED AND SWORN TO
21 before me this 17th day
of February, A.D., 2012.

22 
23 Notary Public



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