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CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD MAY 21 2003

IN THE MATTER OF:

PROPOSED SITE-SPECIFIC
WATER POLLUTION
REGULATIONS APPLICABLE
TO THE CITY OF EFFINGHAM,
BLUE BEACON INTERNATIONAL, INC.
AND TRUCKOMAT CORPORATION

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)
) R 03-11
) (Site Specific Rulemaking - Water)
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STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

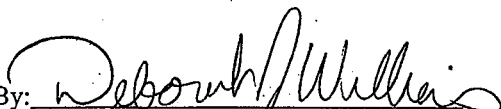
John Knittle, Hearing Officer
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Matthew Hortenstine
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Effingham, Illinois 62401

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **POST-HEARING COMMENTS** 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: May 19, 2003

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAY 21 2003

IN THE MATTER OF:)
)
PROPOSED SITE-SPECIFIC WATER)
POLLUTION REGULATIONS APPLICABLE)
TO THE CITY OF EFFINGHAM, BLUE)
BEACON INTERNATIONAL, INC. AND)
TRUCKOMAT CORPORATION)
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R 03-11
(Site Specific Rulemaking
Water)
STATE OF ILLINOIS
Pollution Control Board

POST-HEARING COMMENTS OF THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

INTRODUCTION

On October 22, 2002, the City of Effingham ("City"), Blue Beacon International, Inc. ("BBI"), and Truckomat Corporation ("Truckomat")(referred to collectively as "Effingham" or "Petitioners") filed a site-specific rulemaking proposal with the Illinois Pollution Control Board ("Board") pursuant to Section 27 of the Illinois Environmental Protection Act ("Act"). [415 ILCS 5/27]. Effingham has proposed to change the fluoride standard applicable to the discharge from the City's wastewater treatment plant from 1.4 milligrams per liter ("mg/L") to 4.5 mg/L. Specifically, Petitioners have requested relief from 35 Ill. Adm. Code 304.105 as it applies to the water quality standard for fluoride at 35 Ill. Adm. Code 302.208(g). The Illinois EPA supports the granting of regulatory relief, but has recommended that relief be granted instead from the general use water quality standard in 35 Ill. Adm. Code 302.208(g).

On April 11, 2003 a hearing was held in the City of Effingham on the site-specific rulemaking proposal. Prior to the hearing, pre-filed testimony was submitted by the Petitioners and the Illinois EPA. After submittal of the pre-filed testimony, a hearing officer order was issued on March 21, 2003 containing questions the Board staff

intended to ask the Petitioners at the hearing. On April 4, 2003, Petitioners submitted written responses to the Board's questions. At the April 11, 2003 hearing several witnesses testified on behalf of the Petitioners and Deborah Williams and Scott Twait presented testimony and answered questions on behalf of the Illinois EPA.

Additional information was requested by the Board on some of the issues discussed at the hearing. Responses to these items are presented in the Illinois EPA's post-hearing comments and attachments. Upon review of the transcript, the Illinois EPA feels there are also some issues that merit additional clarification or discussion.

ADDITIONAL INFORMATION REQUESTED BY THE BOARD

Permanency of site-specific relief and the Clean Water Act

After questioning by the Board staff and testimony from the parties regarding the proper format for the requested relief, the hearing officer asked the parties to address, in their post-hearing comments, the issue of the permanency of any relief granted and the Board's authority to grant permanent relief under the Clean Water Act. Transcript of April 11, 2003 hearing ("Tr.") at 74-75. The Agency has argued in its pre-filed testimony that relief from 35 Ill. Adm. Code 304.105, as requested by the Petitioners, would be inconsistent with the Clean Water Act. 33 U.S.C. §§1251-1387. The basis for this conclusion is that it would be an attempt to avoid the process for setting and gaining approval from the United States Environmental Protection Agency ("U.S. EPA") of water quality standards. In addition, it would be granting a permanent license to violate the water quality standards for which there is no comparable federal provision.

The appropriate relief to grant in this matter is in the form of a site-specific water quality standard that would be sent to U.S. EPA for approval. At this time and with the

scientific information available, the Illinois EPA believes this is a scientifically sound standard that should apply permanently to the applicable reach of stream. The Illinois EPA does not believe there is any reason to limit the term of the relief granted by a sunset provision and in that sense the Board has authority to grant "permanent" relief. However, Section 303 of the Clean Water Act requires States to perform "triennial reviews" of its water quality standards. 33 U.S.C. §1313. If, at some point, one of these reviews indicates that the science underlying this proceeding was faulty or outdated, the Agency and the Board would be obligated to revisit the relief granted in this case.

The Agency is also in agreement with the modeling conducted by the Petitioners that demonstrates a water quality standard of 5.0 mg/L will not be violated with an effluent limit of 4.5 mg/L and that 4.5 mg/L effluent limit will also ensure that the fluoride level at the City of Flora public water supply intake will not exceed 2.0 mg/L. However, if additional sampling and the passage of time reveals that this information is faulty and those water quality standards are not being met, the Agency would also have to revisit the issue either through the permit renewal process or possibly through finding the water body impaired for fluoride which would require the Illinois EPA to establish a load limit that would bring the waterbody into attainment. This process also might force imposition of more stringent relief on the Petitioners than the relief granted by the Board. It is also possible that additional requirements could be adopted by the General Assembly or U.S. EPA that would require a revisiting of the relief granted in this case. The Illinois EPA understands Petitioners concerns that its future expectations are protected and believes that the relief the Illinois EPA has recommended in this case will protect those expectations to the greatest extent allowable by law.

Endangered or Threatened Species

The Board inquired at the April 11, 2003 hearing whether Petitioners would be willing to contact the Illinois Department of Natural Resources ("IDNR") regarding any potential impacts on any endangered or threatened species in the relevant stream segment. Tr. at 81. At that time the Illinois EPA offered to provide additional information in post-hearing comments regarding any consultations that may have been conducted with IDNR. The Agency consulted with the IDNR and they replied on April 14, 2003 that there were no threatened or endangered species present in the affected stream reach. See Attachment A.

Notification to the City of Flora

Finally, the Board requested additional information on how the City of Flora would be notified if the water quality standard of 2.0 mg/L was being exceeded at its public water supply intake. Tr. at 64-65. As discussed by the Agency in its testimony, the City of Effingham would have the obligation to prevent this situation from occurring in the first place. Monitoring would be conducted as low flow conditions are approached and measures would be implemented to reduce fluoride concentrations prior to any exceedances at Flora. These affirmative steps on the part of the City and its industrial fluoride dischargers would be mandated by a special condition of Effingham's National Pollutant Discharge Elimination System ("NPDES") permit to decrease fluoride concentrations at Flora. In addition, the Illinois EPA is willing to implement or require Effingham to implement appropriate notifications to the City of Flora if requested by the Board.

CLARIFICATIONS OF HEARING TESTIMONY

The Illinois EPA would also like to use these Post-Hearing Comments as an opportunity to clarify some testimony by both the Petitioners and the Illinois EPA as the April 11, 2003 hearing with particular emphasis on the impact site-specific relief from the general use water quality standard would have on other dischargers.

Clarifications of Petitioners' Testimony

At the hearing, counsel for Petitioners discussed the reasoning behind their conclusion that the site-specific relief granted by the Board should include the language "subject to the averaging rule of Section 304.104." Tr. at 15. While the Illinois EPA is not clear on the Petitioners' position regarding this language, it still does not think inclusion of this language is appropriate or necessary. As noted in the Agency's pre-filed testimony on page 13, the Agency believes that the phrase "subject to the averaging rule of Section 304.104" should be removed from the language of the site-specific rule. It is the Agency's opinion that this language does not provide any additional relief to the Petitioners and would only serve to cause confusion.

Petitioners also testified that the Board had authority to grant relief from 35 Ill. Adm. Code 304.105 and the Illinois EPA had authority to issue an NPDES permit incorporating such relief based on 40 CFR 131.13. Tr. at 14. Petitioner cites to this section for the proposition that the Board has authority to grant relief from the requirement that one's effluent not cause a violation of a water quality standard based on its discretion under the federal regulations "regarding implementation of its water quality standards, including how the standard applies during low flows." Tr. at 14. The Illinois EPA disagrees that the relief in this case applies or is necessary only during low

flows. In addition, the Board has established its implementation rules for low flows in the mixing zone regulations found at 35 Ill. Adm. Code 302.102. It is the requirement of Section 302.102(b)(8) of the mixing zone regulations that no mixing zone is available in waters "which have a zero minimum seven day low flow which occurs once in ten years" ("7Q10") which, in part, necessitates this rulemaking. In addition, the Board has determined in 35 Ill. Adm. Code 302.103 that water quality standards "apply at all times except during periods when flows are less than [the 7Q10]." Therefore, the Illinois EPA disagrees with Petitioners contention that 40 C.F.R. 131.13 gives the Board authority to grant relief from Section 304.105.

The Illinois EPA also disagrees with Petitioners' interpretation of the letter from U.S. EPA to Illinois EPA regarding the John Deere site-specific rulemaking that the only concern expressed by U.S. EPA was that they had been unaware of the relief. Tr. at 14-15. The basis for U.S. EPA's concern about being unaware of the relief granted by the Board was that relief from 304.105 was viewed as an attempt to avoid changing a water quality standard that U.S. EPA was entitled to review and approve. It does not make sense to suggest that U.S. EPA would not have objected had they merely received notification of the relief from the Illinois EPA, but not a chance to approve the water quality standard change.

Impact of relief from the water quality standard on other dischargers

A significant portion of the testimony and questioning at the April 11, 2003 hearing addressed the impact of granting relief from 35 Ill. Adm. Code 302.208(g) on other dischargers. Several aspects of that discussion merit clarification.

Counsel for Petitioners, Mr. Walter, discussed the Petitioners' view that relief from the water quality standard alone would result in providing the same relief to any other discharger along the stream segment without that discharger presenting a case to the Board to justify such relief. In support of this position, Petitioners quoted a discussion of this issue in the Board opinion In the Matter of: Petition of Rhone-Poulenc Basic Chemicals Company and Thorn Creek Basin Sanitary District for an Adjusted Standard from 35 Ill. Adm. Code 302.208 and 304.105, AS 94-7 (June 23, 1994). The language quoted was as follows:

To understand the circumstance, it is necessary to recognize first that for water at a concentration of "X," any additional amount of water at concentration "X" may be added, and the resultant concentration will remain at "X." Thus, for example, under the relief requested, if TCBSD were discharging such as to cause Thorn Creek to have a 2,100 mg/L TDS concentration at water treatment plant outfall, all other sources of discharge between the TCBSD outfall and the USGS gauge at Thorn Creek could have a TDS concentration of 2,100 mg/L, and all the mixed concentration through the whole reach would remain 2,100 mg/l. Moreover, it is within the mathematics of the situation that if TCBSD were to discharge so as to cause Thorn Creek to have a TDS concentration below 2,100 mg/L, the Agency would have TCBSD strive for all other sources of discharge between the outfall, and the USGS gauge could have a TDS concentration above 2,100 mg/L without causing violation of a 2,100 mg/L in-stream standard.

Tr. at 47-48.

Although the language quoted by Petitioners explains the basis for the Board's concerns over granting overly expansive relief, there are some technical deficiencies in this analysis that should be addressed. This interpretation may be applicable for the initial stream segment where a site-specific water quality standard is in place, but it is not an accurate statement with regard to subsequent stream segments and the point where the stream returns to the general use standard. At the hearing, the Board asked whether other dischargers would be allowed to take advantage of the relief

recommended by the Illinois EPA. The Agency would like to supplement its testimony with a more detailed explanation of if and when other dischargers could take advantage of relief granted in the form of a site-specific water quality standard for fluoride that would be changed for specific stream reaches.

In addition to addressing whether a subsequent discharger would be able to meet the water quality standard applicable at the point of discharge, the Agency is required to assure that all other applicable water quality standards would continue to be met in all affected stream reaches. If a discharger applied for a permit to the Agency to discharge 0.95 million gallons per day with a concentration of 4.5 mg/L of fluoride, the Agency would determine if the water quality standards would be met in Salt Creek at the point of discharge and at points downstream. In this case, because of the limited dilution available, the Agency would determine that the water quality standards would not be met and the discharger would be limited to a fluoride level that would assure that the fluoride water quality standard would be met. This value may or may not be greater than 1.4 mg/L. On the other hand, if a discharger applied for a permit to discharge 100 gallons per day with a concentration of 1.5 mg/L of fluoride, the Agency would again look at all pertinent locations to determine if the water quality standards would be met. If it could be shown that the water quality standards would be met, and for this example attainment is likely, the Agency would permit the discharge. The operating criterion is the applicable water quality standard in the receiving stream whether that be a site-specific standard, a general use standard, or a public and food processing water supply intake standard.

This is also why the Agency typically recommends that relief be granted in the form of a site-specific or adjusted water quality standard with specific limitations designated for various stream segments. The three distinct stream segments outlined in the Agency's proposed relief (see below) are intended to guarantee both that the public water supply intake is protected at the City of Flora and that the relief is not overly expansive. When the Petitioners suggest that a site-specific water quality standard should contain only two stream segments rather than the three segments contained in the Illinois EPA's proposed language, this would serve to grant more expansive relief than necessary for a significant portion of the relevant water body. Tr. at 52.

Impact of relief from the water quality standard *that is available only to the Petitioners* on other dischargers

At the hearing Mr. Hortensine, counsel for the City of Effingham, made the following statement in reference to the scenario proposed by the Board where relief would be granted from the water quality standard in Section 302.208(g) but apply only to the Petitioners:

As I understand, you're saying that the language that the Agency proposed relative to the fact that a special condition would be limited only to the City of Effingham, and any other discharger **of any nature whatsoever** in the stream course would have to come back to the Board for further relief if they discharge fluoride? Is that accurate? (emphasis added).

To which Ms. Liu of the Board staff is quoted as having responded: "Yes." Tr. at 70.

The Illinois EPA would like to take the opportunity to clarify that under the scenario presented by the Board's questioning, granting relief from the water quality standard that was applicable only to the Petitioners, it is possible there could be a fluoride discharger somewhere on the length of stream impacted by this proceeding that could meet the general use water quality standard. That discharger would not need

regulatory relief. As explained above, in most hypothetical examples, a new discharger would have the potential to cause a violation of the water quality standard at Flora. But in theory, if another discharger could comply with the 1.4 mg/L general use water quality standard and not cause a violation of 2.0 mg/L at Flora, they would not need to come to the Board for additional relief even under the scenario proposed by the Board where relief would apply only to the Petitioners.

Also, if the Board decided to change the water quality standard in the receiving stream and limit the relief only to the Petitioners, there could be a circumstance where a new discharger, who would normally be able to take advantage of mixing, would not be able to do so as a result of the relief granted to the Petitioners. If a discharger proposes to discharge to a portion of the receiving stream that has a flow rate greater than zero and the background concentration was greater than 1.4 mg/L, the discharger could not take advantage of mixing.

The Illinois EPA believes that the appropriate relief to grant to Petitioners in this matter is to grant relief from 302.208(g) for three distinct reaches of stream as provided in the language below. In addition, from a technical perspective, the Agency does not think there will be many, if any, situations in which other dischargers could take advantage of relief granted to the Petitioners in this matter. As Scott Twait stated in his hearing testimony: "If there was another discharger that would like to discharge a larger amount of fluoride to the receiving stream, their additional amount would either change the concentrations in the receiving stream above what we're granting and/or change the length of the adjusted stream." Tr. at 46. However, the Illinois EPA maintains the position of its pre-filed testimony that based on the nature of the relief requested (from a

water quality based effluent limit to a 7Q10 stream) and the type of technical review conducted, it is appropriate and preferable for the Board to grant relief focusing on the stream segment rather than limiting the relief to the individual discharger. As Petitioners pointed out, Section 27(a) of the Environmental Protection Act gives the Board authority to grant relief to individuals or sites. In many cases it is more appropriate to grant relief to individuals, but the Agency feels the most appropriate use of the Board's authority in this matter is to apply the relief granted to the "site" or the stream segments identified in the Agency's recommended language.

Clarifications of Illinois EPA's Testimony

In the Illinois EPA's hearing testimony, Scott Twait stated that the Board's fluoride water quality standard was adopted to protect aquatic life rather than to protect public water supplies. Tr. at 91-92. The Illinois EPA would like clarify this statement by drawing the Board's attention to the petition for site-specific rulemaking in this matter in which the Board's 1972 opinion adopting a water quality standard of 1.4 mg/L for fluoride is discussed (Section D). That opinion indicated that the fluoride general use water quality standard was set for aquatic life protection and would also assure a potable supply. It does not state specifically that the 1.4 mg/L was necessary to assure a potable supply. It is the Illinois EPA's opinion that some of the data that was relied upon in setting the original water quality standard decision is outdated.

Finally, the Illinois EPA would like to point out either a typographical error or a misstatement by the Agency's counsel on page 58 of the transcript that may make the entire paragraph confusing. Ms. Williams is quoted as using the phrase "want to" where it should have been "would not." The relevant sentence should read: "But when we are

doing our 305-B reports, when we go to determine whether the water body is impaired, we *would not* be forced to find this water body impaired for fluoride if the water quality standard has been changed.” Tr. at 58.

Form of Relief and Suggested Language

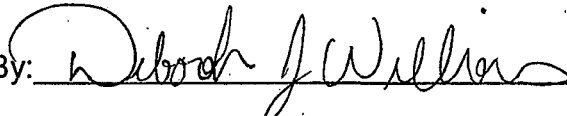
The Agency's pre-filed testimony focused primarily on whether relief should be granted to the Petitioners in the form of a site-specific water quality standard (relief from 35 Ill. Adm. Code 302.208(g)) or relief from the requirement not to cause a violation of a water quality standard (35 Ill. Adm. Code 304.105). In addition, the bulk of the Agency's testimony at the hearing addressed this topic. The Illinois EPA would like to thank the Board for the opportunity to express in detail the basis for its position that permanent relief from 304.105 would be inconsistent with the Clean Water Act. The Illinois EPA recognizes the Board's concerns about granting relief that is overly expansive and beyond the justification presented by the Petitioners, but the Agency believes there are technical reasons in this case why there is little opportunity for other dischargers to take advantage of the recommended relief. In addition, before recommending that the Board grant relief from a water quality based effluent limit in a proceeding where the relief granted has no time limitation, it is the obligation of the Agency to review the technical information submitted and any other information available to determine whether granting the requested relief will protect the existing uses of the receiving stream and should only submit a favorable recommendation where sufficient evidence is available to justify a revised water quality standard for the segment of stream impacted. Based on the analysis conducted, the Board should not be concerned about the possibility that other dischargers may receive a benefit from relief granted.

To facilitate the Board's decision-making in this matter, the Illinois EPA resubmits the suggested language from its pre-filed testimony:

Section 303.XXX. Unnamed Tributary of Salt Creek, Salt Creek, and Little Wabash River. The fluoride general use water quality standard of Section 302.208(g) shall not apply to the waters of the State which are located from the point of discharge of the POTW located at 903 E. Eiche Avenue in Effingham, Illinois, owned by the City of Effingham, to an unnamed tributary of Salt Creek, said point being located in Effingham County, T8N, R6E, Sec. 28, Lat: 39°06'24", Long: 88°31'55", to the confluence of said unnamed tributary with Salt Creek; to the confluence of Salt Creek with the Little Wabash River; to the confluence of Buck Creek and the Little Wabash River. Fluoride levels in such waters shall meet a water quality standard for fluoride (STORET Number 00951) as set forth below:

- a) From the point of discharge of the City of Effingham POTW to the unnamed tributary to the confluence of the unnamed tributary with Salt Creek and from the confluence of the unnamed tributary with Salt Creek to the confluence of Salt Creek with the Little Wabash River, the fluoride water quality standard shall be 5.0 mg/L.
- b) From the confluence of Salt Creek with the Little Wabash River to a point on the Little Wabash River located 2.8 miles downstream of Louisville, Illinois, the fluoride water quality standard shall be 3.2 mg/L.
- c) From a point on the Little Wabash River located 2.8 miles downstream of Louisville, Illinois to the confluence of Buck Creek and the Little Wabash River, a point on the Little Wabash River located approximately 9.8 miles downstream of Louisville, Illinois, the fluoride water quality standard shall be 2.0 mg/L.

Respectfully submitted,

By: 

Deborah J. Williams
Assistant Counsel
Division of Legal Counsel

Date: May 19, 2003

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

ATTACHMENT A



Illinois Department of Natural Resources

124 South Second Street • Springfield, Illinois 62701-1717

Phone: 217-785-1225 • Fax: 217-785-1225

CONSULTATION AGENCY ACTION REPORT

(Illinois Administrative Code Title 17 Part 1075)
Division of Resource Review and Coordination
Stephen K. Davis, P.G., Chief

Date Submitted: 4/9/03
If this is a resubmittal, include previous IDNR response if available.

FOR DEPARTMENT USE ONLY
PROJECT CODE: 030424 DUE DATE: 5-14-03

Applicant: <u>EPA / BOW</u>	Phone: <u>558-6012</u>
Contact Person: <u>Scott Twait</u>	Fax: <u>782-5549</u>
Applicant Address: <u>1021 N Grand Ave. # Springfield IL 62684</u>	Email: <u>scott.twait@epa.state.il.us</u>

LOCATION OF PROPOSED ACTION
A MAP SHOWING LOCATION OF PROPOSED ACTION IS REQUIRED.

Project Name: Effingham AS County: Effingham

Project Address (if available): _____

City, State, Zip: _____

Township/Range/Section (e.g. T45N, R9E, S2): T8N, R10E, S2B

Brief Description of Proposed Action: Seeking Advisory Standard For Florida The effect of stream reach is the unnamed tributary of Salt Creek from the discharge to the confluence of Salt Creek & thence to the confluence of the Little Wabash River and thence to the confluence of Buck Creek.

Projected Start Date and End Date of Proposed Action: _____

Will state funds or technical assistance support this action? [Yes No

Local State Agency with Project Jurisdiction: EPA / BOW

Contact: See above info Phone: _____

Address: _____ Fax: _____

Email: _____

FOR DEPARTMENT USE ONLY

Are endangered/threatened species or Natural Areas present in the vicinity of the action? [Yes No

Could the proposed action adversely affect the endangered/threatened species or Natural Area? [Yes No

Is consultation terminated? [Yes No

Comments: _____

Evaluated by: Mitchell R. Branch Date: 4-14-03

Division of Resource Review & Coordination (217)785-5500

STATE OF ILLINOIS

COUNTY OF SANGAMON

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)
) SS
)
)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached **POST-HEARING COMMENTS** of the Illinois Environmental Protection Agency, upon the person to whom it is directed, 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
(First Class Mail)

John Knittle, Hearing Officer
Illinois Pollution Control Board
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Springfield, Illinois 62705-5776
(First Class Mail)

Matthew Hortenstine
122 East Washington
Post Office Box 668
Effingham, Illinois 62401
(First Class Mail)

and mailing it from Springfield, Illinois on May 19, 2003 with sufficient postage affixed as indicated above.

Nancy J. D. Lampert

SUBSCRIBED AND SWORN TO BEFORE ME
this 19th day of May 2003.

Cynthia L. Wolfe
Notary Public

